

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-1204

B
Rogers

IN THE
United States Court of Appeals
For the Second Circuit

No. 75-1204

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against
THOMAS JAMES,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE ~~SOUTHERN~~ **EASTERN** DISTRICT OF NEW YORK

APPELLANT THOMAS JAMES' APPENDIX

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DOCKET ENTRIES

THE UNITED STATES)	
)	
vs.)	BRAMWELL, J.
)	
TOMMY JAMES)	73 CR 95

PROCEEDINGS

1-23-73	Before Weinstein, J. - Indictment filed.
1-26-73	Before Travia, J. - Case called - deft. present without counsel - deft. arraigned and waives reading of the indictment and the court enters a plea of not guilty for the deft. - bail continued.
1-26-73	Notice of Appearance filed.
1-31-74	Magistrates file 72 M 10 inserted in criminal file.
12- 2-74	Before Judd, J. - Case called - deft. present without counsel - deft. requests for adjournment - case adjd. to 2/3/75 at 10:00 A.M. for trial.
2- 3-75	Before Judd, J. - Case called - deft. and counsel M. Coiro present - trial ordered - selection of jurors begun - jurors selected and sworn - trial cont'd. to 2-4-75.
2- 4-75	Before Bramwell, J. - Case called - deft. and counsel present - trial resumed. Deft's motion for identification hearing is denied - deft's motion to dismiss motion denied - trial cont'd to 2-5-75 at 10:00 A.M.

2- 5-75 Before Bramwell, J. - Case called - deft. and counsel present - trial resumed. Deft's motion to dismiss denied - Judge charges jury - order of sustenance signed - jury retires to deliberate - court gave jury Allen charge - jury returns and were unable to arrive at a verdict - court declares a mistrial - jury discharged - case adjd. to 2-10-75 at 10:00 A.M. for trial. Trial concluded.

2- 5-75 By Bramwell, J. - Order of sustenance filed.

2- 5-75 Stenographers transcript dated 2-4-75 filed.

2- 6-75 Stenographers transcript dated 2-5-75 filed.

2-10-75 Before Bramwell, J. - Case called - deft. and counsel present - case adjd. to 3-17-75 at 10:00 A.M. for trial.

3-17-75 Before Bramwell, J. - Case called and adjd. to March 19, 1975 for trial.

3-19-75 Before Bramwell, J. - Case called and adjd. to March 24, 1975 at 10:00 A.M.

3-24-75 Before Bramwell, J. - Case called and adjd. to March 26, 1975 for trial.

3-26-75 Before Bramwell, J. - Case called - deft. and counsel present - trial ordered and begun - jurors selected and sworn - trial cont'd to 4/1/75 at 10:00 A.M.

4- 1-75 Before Bramwell, J. - Case called - deft. and counsel present - trial resumed - deft's motion for mistrial, etc. - motion denied - trial cont'd to 4-2-75 at 10:30 A.M.

4- 2-75 Before Bramwell, J. - Case called - deft. and counsel present - trial resumed - trial cont'd. to 4-3-75.

4- 3-75 Before Bramwell, J. - Case called - deft. and counsel present - trial resumed - order of sustenance signed for lunch - 16 persons - jury came into court at 4:00 P.M. and rendered a verdict of guilty - jury polled and discharged - deft's motion to set aside verdict, etc. - motion denied. Bail cont'd. and sentence adjd. without date - deft. is to remain in the Eastern District of N.Y.

4- 3-75 By Bramwell, J. - Order of sustenance signed (lunch).

5-16-75 Before Bramwell, J. - Case called - deft. and counsel present - deft. sentenced to imprisonment for a period of seven (7) years - plus a special parole term of five (5) years - deft. advised of his right to appeal - stay of execution of sentence to 5-21-75 granted - bail cont'd.

5-16-75 Judgment and Commitment filed - certified copies to Marshal.

5-21-75 Notice of Appeal filed.

5-21-75 Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.

5-21-75 Before Bramwell, J. - Case called - deft. and counsel Ronald Fischetti present - bail set at \$10,000.00 surety bond - pending appeal - stay granted to 5/23/75 for surrender.

5-23-75 Stenographer's transcripts dated 3/31/75, 4/1/75, 4/2/75 and 5/3/75 filed.

5-23-75 Before Bramwell, J. - Case called - Deft. T. James not present - counsel Gerald Shargel present - deft. to surrender on 5/28/75.

5-27-75 Stenographer's transcripts dated 5/16/75 filed.

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

-against-

No. 73 CR 95

TOMMY JAMES,

Defendant.

-----X

THE GRAND JURY CHARGES:

On or about the 24th day of August, 1971 at Jamaica, within the Eastern District of New York, the defendant TOMMY JAMES, did knowingly, wilfully and intentionally possess with intent to distribute approximately 20 grams of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1).)

A TRUE BILL

UNITED STATES ATTORNEY
Eastern District of New York

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MR. THOMPSON: Thank you.

THE COURT: Right.

MR. THOMPSON: Your Honor, the Government calls

Investigator George McElynn.

G E O R G E M C E L Y N N , called as a witness,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Investigator McElynn, by whom are you employed
at this time?

A I'm employed as an investigator with the New
York State Police.

Q For how long have you been employed by the
New York State Police?

A Thirteen years.

Q What is your rank, if any, or position?

A My rank is as an investigator which is equal
to rank of sergeant on regular city police force.

Q How long have you been -- held this position?

A I've been an investigator with the New York
City Police since June 18, 1962. I have been an investigator
since August 1966.

Q What type of training have you received in the
course of your employment?

McElynn-direct

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2 A Well, I'm a graduate of the New York State
3 Police Academy, Albany, New York. I have attended the
4 Federal Bureau of Narcotic Training School in New York City
5 and the Police Academy. Also, Certified Polygraph Examiner
6 and graduate of the Baxter School of Lie Detection, New York
7 City. Also attended seminars, New York City Police Academy
8 and drug identification and drug undercover surveillance-type
9 work.

10 Q Investigator McElynn, I direct your attention
11 to August of 1971. Will you please describe your duties in
12 a general sense at that time and what type of work you were
13 assigned to in the course of your employment?

14 A In the early part of August of 1971, I was
15 attached to the Federal Bureau of Narcotics office,
16 Westbury office, in Long Island, New York.

17 Q What does "attached" mean?

18 A I was attached from my department to the
19 Federal Bureau of Narcotics.

20 Q Who was your superior or supervisor in terms
21 of your work with the West Bureau office of the Federal
22 Bureau of Narcotics?

23 A My primary supervisor, case supervisor at that
24 time was Special Agent Harry McCullin.

25 Q In the course of your work in Westbury, did you

1
2 ever go to the vicinity of Jamaica, Queens?

3 A Yes, I did.

4 Q When was that?

5 A The first time would have been on August 24,
6 1971.

7 Q Do you recall the time that you went to
8 Jamaica? Approximately?

9 A On that particular date I made two visitations
10 to Jamaica, New York.

11 Q With regard to the first trip.

12 A The first visitation I made there was in the
13 early afternoon, approximately 3:00 p.m. in the afternoon.

14 Q All right. Now, what had begun that day
15 before you made your trip to Jamaica. Begin with your
16 official duties on that day.

17 A On that day upon leaving my hotel room I
18 arrived at the Westbury office approximately 9:00 p.m. or
19 9:30 in the morning. Later on during that morning I met
20 Agent McCullin along with a person who was introduced to me
21 as "Moe" and "Maureen" who I knew to be informants for
22 federal agents.

23 Q These are two people?

24 A Yes, that's correct. Along with several
25 other agents who were assigned to the office who I don't,

cannot identify by names.

Q After being introduced, what was your next area of activity?

A After I was introduced to them, we sat down and had a conversation as to what our activities were going to be in Jamaica. That particular day I was supposed to be taken in Jamaica, New York by this informer, "Moe," to be introduced to --

MR. QUAGLIATA: I am going to object to this, Judge.

THE COURT: I'll sustain the objection.

Q How did you travel from Westbury to Jamaica?

A I was given an assigned vehicle by the Federal Bureau of Narcotics.

Q What kind of vehicle was it? Can you describe it?

A Yes. It was a 1970, lime-colored green Cadillac with a white vinyl top.

Q What steps, if any, did you take before with regard to the vehicle before you left the Westbury office?

A I was given the keys to the vehicle by Agent McCullin. The vehicle is parked in the parking lot at Westbury office. I immediately conducted a search of the vehicle from the trunk and also the interior of the vehicle

McElynn-direct

for any identifiable marking related to the vehicle to the Federal Bureau of Narcotics or any other police agency.

Q Upon commencement of this search, what did you do next?

A Prior to that search while I was making that search, I was in the company of the informant, "Moe," and "Maureen." Prior to that search, I conducted a search in the office of the informant "Moe," the physical search of his person to assure myself that he had no weapons.

MR. QUAGLIATA: I am going to object to this, Judge. I don't see what this has to do with this case.

THE COURT: I'll overrule the objection. I'll allow it subject to being connected to this proceeding.

MR. THOMPSON: Very well, your Honor.

Q Who accompanied you when you left the Westbury office and by what means did you leave?

A I was accompanied in the vehicle which I previously described, the 1970, Cadillac with "Moe" and "Maureen" and I was followed by several other federal agents.

Q And where did you, where did you go when you left the office of Westbury?

A The first visit was made to Bruno's Tavern, located on New York Boulevard in Jamaica.

McElynn-direct

Q Upon arriving there what did you do?

A Upon arriving we entered the tavern. We had a beer. We left, we departed.

Q Who is "we"?

A When "we" started, it was just "Moe" and myself. We left Maureen in the tavern at the time.

Q Where did you proceed after that?

A After that we made a few other stops at a couple of other taverns in an attempt to locate a certain person we were looking for.

Q Where did you go after those other stops you refer to?

A After we failed to locate the person we were looking for, we grouped, returned back to the Westbury district office in Long Island.

Q Did you do that?

A Yes, we did.

Q Now, with regard to the second trip you referred to earlier: When did that begin?

A As I recall, we returned back to the Westbury office approximately 6:00 p.m. We returned back to Jamaica area approximately 7:00 or 8:00 o'clock that evening.

Q And the "we" will you please identify the person other than yourself you are referring to?

McElynn-direct

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A This would have been Moe and myself.

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Q And where did you go when you returned to the area of Jamaica?

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A When we returned we went directly to Bruno's Tavern located on New York Boulevard in South Jamaica, New York.

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Q What means did you use to travel?

A In the same vehicle which I previously

described.

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Q What did you notice upon arrival at Bruno's Tavern that evening?

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A Upon arrival I parked my car maybe a half a block away from the tavern. On the New York Boulevard side of the tavern. The tavern is located at the intersection at the corner intersection of -- I'm speaking of South Road and New York Boulevard. I parked on the New York side of the boulevard which would be the side door side entrance of the tavern.

20

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23

I observed several people standing outside of the tavern at the corner in particular, approximately eight or nine males and females gathered there talking, having a general conversation.

24

25

Q Can you describe those individuals any more than males or females?

81

2 A They were all Black.

3 Q Upon arrival and on parking the car, what did
4 you do next?

5 A At this point Moe called to someone who was
6 in a group. He walked over to where we were standing and we
7 had a conversation.

8 Q Can you identify the individual with whom you
9 spoke at that time?

10 A Yes, I can.

11 Q If he's present in court, would you point him
12 out, please?

13 A Yes. He's the gentleman sitting there with
14 the green suit on.

15 MR. QUAGLIATA: Indicating the defendant.

16 THE COURT: Thank you.

17 Q Now, will you relate the conversation that you
18 had with the defendant at this time?

19 A Yes. I was introduced to the defendant by Moe
20 as his cousin from Washington, D.C. and that I was in town to
21 purchase a half a kilo of heroin. My conversation proceeded
22 from that point primarily solely with the defendant relative
23 to the purchase.

24 I told him that at this point I want to purchase
25 an ounce to begin with in order to insure myself of the

2 quality and strength and the potency of the substance I was
3 buying. If I was satisfied with this particular purchase,
4 I would go for half a ky.

5 Q Now, what, if anything, was his response to
6 this?

7 A He responded by telling me he only dealt in
8 good stuff and that it would take six cuts.

9 Q What arrangements were made with regard to
10 price?

11 A I advised him at this time I was willing to
12 pay a thousand dollars for an ounce and he told me that he
13 usually gets thirteen or fourteen. We bickered about the
14 price and we finally concluded on a price of twelve thousand
15 dollars.

16 Q Were you prepared at that point to pay money?

17 A Yes, I was.

18 Q Where did you have this money from? What
19 was the source?

20 A The money was given to me by Agent McCullin,
21 pre-recorded at the Westbury office prior to my leaving and
22 going to Jamaica, New York.

23 Q Prior to both trips?

24 A Yes, that's correct.

25 Q Did you have any other money that had been

McElynn-direct

provided to you on this day?

A Yes. I was given \$50 specifically to use to buy drugs and socialize, whatever purpose I needed to use it for. To buy food, eat, whatever. It was considered to be bounce money, more or less.

Q After you had arrived and agreed at a price, what was the next portion of the discussion?

A He told me to go inside the bar and wait. He would return and we would conduct business after that.

Q Excuse me. You have to speak clearly.

A And we would, he told me to go inside the tavern and wait for him. He would return momentarily and that we would take care of business.

Q What did you do at that point?

A At that point I went into the bar and I ordered a drink. I sat with Moe and Maureen. Had to be at the bar at the time and the three of us were sitting together primarily most of the evening.

Q Now, do you know about the time that you entered the bar, about when it was?

A I would say no more than maybe fifteen minutes after I pulled up and parked the car after the conversation was had.

Q How long did you remain in the bar?

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McElynn-direct

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A I'd say an hour, hour and a half.

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Q What did you do while you were there?

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A During the time I was there I had approximately two or three beers. There came a point at one point Moe came over to me at the bar and said he had spoken to Tommy and that Tommy --

8

MR. QUAGLIATA: I'll object to this, Judge.

9

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THE COURT: I'll sustain it. I won't permit him to go further.

11

MR. THOMPSON: Very well.

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Q After Moe approached you at the bar what happened next?

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A Next thing I did, I spoke with Maureen and I gave her a dime and a telephone number to call. Which would have been the New York office, the base radio operation to indicate to the surveillance teams which were covering my activities on the street.

19

MR. QUAGLIATA: I am going to object to this.

20

THE COURT: I'll sustain it.

21

22

Q You said you gave Maureen a dime and a telephone number and some instructions.

23

A That's correct.

24

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Q What, if anything, did she do after you gave her this information and the dime to her?

1 MR. QUAGLIATA: I am going to object to it.

2 THE COURT: Sustained, don't answer it.

3 Q When did you next see the defendant on that
4 night?

5 A The next time I saw the defendant was when he
6 entered the bar from the -- I don't know what door he entered
7 the bar from, but he approached me from behind and tapped me
8 on the shoulder and told me to come into the rest room.

9 Q What did you do when he told you that?

10 A I followed him into the rest room. He asked
11 me if I had the money. I asked him if he had the stuff and
12 he said he did. He showed me the stuff and I counted out the
13 money.

14 Q What exactly did he show you?

15 A He showed me clear plastic bag~~s~~ containing a
16 white powdery substance.

17 Q What did you do then?

18 A At this time I counted out \$1,200 to him which
19 I exchanged hand to hand. He gave me ~~three~~ clear plastic
20 bag~~s~~ containing a white powdery substance which I placed in
21 my pocket.

22 Q What did the defendant do after he had taken
23 the money from you?

24 A He departed the rest room. I left immediately
25

McElynn-direct

13 1
2 behind him.

3 Q After you left, did you ever see the
4 defendant again that night?

5 A I -- no, I did not.

6 Q What did you do upon leaving the men's room?

7 A After leaving the men's room, I made a
8 telephone call to our radio base advising them I was securing
9 and leaving the tavern.

10 Q All right. Now, going back, if you will, to
11 your first meeting with the defendant. Did you address him
12 by name in any way when you were on the street outside
13 Bruno's Tavern?

14 A I was introduced to him as Tommy.

15 Q Can you describe his appearance, give us a
16 full physical description, if you will, as best you recall?

17 A Yes. He was a Black male, approximately
18 six two to six three. I can only base his height because I
19 feel he was taller than I was. I'm six foot even. He was
20 slender built and he was wearing his hair in what is
21 primarily known as process hair style.

22 Q Can you describe what that means in more
23 specific terms?

24 A Process hair style is a form of straightening
25 your hair with a hot comb more or less and designing it and

McCoullum-direct

styling it whatever manner you want.

Q What manner was the defendant's hair style at that time?

A He had quite a bit of hair. He had a -- his hair was more or less raised in the front quite a bit. It was straight in the process style in comparison to being an Afro or natural style, which is more commonly known, more commonly worn today.

Q Can you describe the clothing he was wearing?

A Yes. He had a blue and white polo type shirt, pair of brown slacks and he was very neatly dressed.

Q When you went into the men's room where did he produce the package from, the clear package?

A From his pocket.

Q Do you know about when you left Bruno's Bar that night?

A It would have been shortly after ten o'clock, probably ten fifteen, ten thirty.

Q Who was with you when you left?

A When I left I left with Moe and Maureen.

Q And what means did you use to leave the area?

A In the same vehicle I previously described we left in.

Q What happened at that point? After leaving

McCoullum-direct

the area.

A At this point I think we drove easterly on New York Boulevard to a hamburger location where we met Agent McElynn along with other agents at the time.

Q Now, when you say you "met" with him, can you describe who got there first, second or the best you can?

A I don't recall who got there first. I think Agent McElynn was there when I got there, I believe. Or more or less as I was proceeding down the boulevard I believe Agent McCoullum passed me. I just followed him to the hamburger stand because of my unfamiliarity with the Jamaica area at the time.

(continued next page)

1
2 Q What if anything happened after you pulled into
3 Hamburger parking lot?

4 A I showed Agent McCullin the package which I
5 had just previously purchased. At this point he conducted a
6 field test. I held the package and Agent McCullin took a
7 paper cup and he wetted it with his tongue, placed it into
8 the plastic bag. He used a field test kit which is commonly
9 known as a Marquis Reagent by bringing the vial and putting
10 the paper cup into the acid solution which immediately turns
11 purple, indicating that the substance had an opium derivative.

12 Q Upon observing this what did you do with regard
13 to the package itself?

14 A At this point I returned the package to my
15 pocket. I got back into my vehicle and I followed Agent
16 McCullin to a motel in Hempstead where he dropped off Moe
17 and Maureen. Then, I followed him from there to the Westbury
18 office in Westbury, Long Island.

19 Q And what happened after you arrived at the
20 Westbury office?

21 A Immediately after arriving at the Westbury
22 office I immediately turned the package over to Agent Cyma
23 (phonetic) which I observed him weigh it on the scales and
24 also, he conducted another field test at that time.

25 Q Where did this take place? Physically, within

2 the office?

3 A Right in the main office itself.

4 Q Was that a desk, a table?

5 A It was a table.

6 Q Where were you with regard to the exhibit?

7 A I was right next to the exhibit at all times.

8 Q And what did you observe done after the weigh-in?

9 A After the weigh-in another field test was
10 conducted by Agent McCullin. At this point, after the field
11 test was conducted the evidence was placed into a box and
12 then placed into an envelope which was sealed. With Agent
13 McCullin signing the rear of the envelope for the seal and
14 I also signed the envelope myself with my name and signature.

15 Q Investigator McElynn, I show you what's been
16 marked as Government Exhibit 11 for Identification and ask
17 you to examine it, please.

18 A Yes.

19 Q Can you identify that exhibit?

20 A Yes, I can.

21 Q How can you identify it?

22 A I can identify it by my first initial and my
23 last name being placed on the rear of the envelope, which is
24 the envelope which originally the evidence was placed into
25 which I observed Agent McCullin place the evidence into the

envelope. It was sealed and I signed it and he signed it.

Q At the time you placed your signature on the back of this exhibit was it in the same condition it is in now?

A No, it was not.

Q How did it differ?

A It's different because it's open from the side which it wasn't opened at the time.

MR. QUAGLIATA: Your Honor, I'm going to object as this being cumulative. I thought we stipulated to the evidence. That's not even part of the defense. So, I don't see what the purpose of going into this particular line of questioning of this witness is.

THE COURT: You are stipulating that it was in that envelope?

MR. QUAGLIATA: I did, Judge.

THE COURT: Yes. All right.

MR. QUAGLIATA: I don't see the purpose.

THE COURT: The purpose is of continuity and I'll permit it.

Q After that night, did you ever see the defendant again within a two-month period after that day?

A No, I did not.

Q What were your duties with regard to or what

1
2 did you do after that night?

3 MR. QUAGLIA: Objection, that I don't under-
4 stand.

5 THE COURT: Sustained.

6 Q How long did you spend at the Westbury office
7 in the process of sealing up and weighing and testing?

8 A Approximately maybe a half an hour.

9 Q Do you know approximately how long you were
10 detailed to the Westbury office of the Federal Bureau of
11 Narcotics?

12 A Off and on for approximately a month and a
13 half.

14 Q If you would, Investigator McLynn, I would
15 like you to describe the interior of Bruno's Bar.

16 A As I related before, Bruno's is located at the
17 intersection of South Road and New York Boulevard in Jamaica,
18 New York. As to the best of my recollection there are two
19 entrances. One is from the South Road side and one is from
20 the New York Boulevard side. The South Road side would be
21 the main entrance and the New York Boulevard side would be
22 the side or rear entrance to the bar. I entered the bar on
23 each occasion. I had an occasion to go to Bruno's Bar and
24 I always entered the side or New York Boulevard side. As
25 you enter the bar from that side you are facing the -- as you

1
2 directly walk through the door the restroom is the -- then
3 there is the bar, kitchen an area to the right of the bar.
4 There is a little space where there is a pool table. It
5 contains a record player, jukebox, cigarette machine and
6 just a local, average neighborhood bar.

7 Q Can you give an estimate of the number of the
8 people or the density, if you will, inside it? What was going
9 on inside? What was going on in the bar while you were
10 there?

11 A To the best of my recollection the jukebox was
12 playing continuously most of the time. People were dancing
13 and the place was quite active. Off and on sometimes it would
14 be more active than other times and people just in and out.
15 It was a very warm day and both doors were open if I recall
16 exactly. Both entrance doors were open.

17 Q Will you describe the men's room, please.

18 A The men's room is a very small room, containing
19 one urinal, a wash basin and I don't recall paper towels or
20 towel holder or not.

21 Q What about the illumination?

22 A It was well illuminated.

23 Q Tell us how long you spent on the street talking
24 with the defendant before he told you to go into the bar.

25 A One conversation was very, very short and brief.

I'd say no longer than five minutes, ten minutes at the top.

MR. THOMPSON: I have no further questions,
your Honor.

THE COURT: Cross-examination by the attorney
for the defendant.

MR. QUAGLIATA: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. QUAGLIATA:

Q Where did you park your car when you got to
Bruno's?

A On which occasion?

Q The first time you got to Bruno's Bar, I think
you testified it was about 3 o'clock in the afternoon.

A Approximately, yes.

Q Where did you park your car?

A On New York Boulevard.

Q How far from the bar?

A Directly in front of the side door of the bar.

Q Then, when you got there again, where did you
park your car?

A I wasn't quite that close. I was maybe -- I
was at the rear of the tavern which would be the eastern part
of the tavern, maybe a half a block away or so.

Q Do you ever remember testifying that you parked

1
2 your car approximately from this table to where you are?

3 A Yes, I did.

4 Q And you testified that way at the first trial,
5 isn't that correct?

6 A That's correct.

7 Q Now, you say you were how far away?

8 A At least at the end of the bar, if not further.

9 Q How far in feet?

10 A I couldn't say. Maybe half a block or some-
11 thing of this. There was no doubt.

12 Q There was no doubt in your mind when you testi-
13 fied at the first trial you testified at a number of occasions
14 in fact, you named this table where you are; is that correct?

15 A Yes, the first time I testified, yes.

16 Q Now, you say your first testimony was in error?

17 A No. It was in error as to what visitation I
18 was referring to.

19 Q Now, when you went to the FBI Headquarters,
20 who did you meet there on your first visitation prior to your
21 leaving for Jamaica?

22 A You mean when I went to the Federal Bureau of
23 Narcotics?

24 Q Correct.

25 A Who did I meet there?

1
2 Q That's correct.

3 A I met the District Supervisor, I think his name
4 was Hank Pilla. I met several agents who I don't recall their
5 names and I met specifically, Agent McCullin who I was
6 assigned to as the case supervisor for my activities while
7 I was assigned to that office.

8 Q Did you meet Moe there?

9 A Yes, I did.

10 Q Did you meet Maureen there?

11 A Yes.

12 Q Boyfriend and girlfriend?

13 A That was my understanding, yes.

14 Q Was that the first time you ever met Moe?

15 A Yes, it was.

16 Q You knew at that time that Moe was a Government
17 informer; is that right?

18 A Yes, I did.

19 Q Now, where do you come from, Investigator,
20 upstate New York?

21 A That's correct.

22 Q Where is that, sir?

23 A Buffalo area.

24 Q What is that, sir?

25 A Buffalo.

1
2 Q You were recruited for this job specifically
3 because you're a black man, right?

4 A I would assume so, yes.

5 Q They needed the FBI did go into Jamaica area;
6 is that correct?

7 A I would assume so, yes.

8 Q Now, sir, you left the Westbury headquarters
9 and you left with whom?

10 A I left with Moe and Maureen.

11 Q Now, let me just interrupt you for one second.
12 I'm going to get back to this point.

13 You mentioned that you were looking for a specific
14 person; is that correct?

15 A That's correct.

16 Q And that was who?

17 A Lindsay Townsend.

18 Q Not the defendant? Is that correct, sir?
19 Lindsay Townsend is not the person --

20 A That's not correct. I was looking for Lindsay
21 Townsend specifically.

22 Q That's what I'm saying but Lindsay Townsend,
23 is that this defendant?

24 A That's correct.

25 Q Now, sir, when you left on the first occasion

1 from Westbury, could you tell me, sir, who you left with?

2 A I left with Moe and Maureen.

3 Q Now, did you tell somebody at a different time,
4 at the time of the first trial that you left with -- that
5 you and Moe were the people in the car in the first occasion?
6

7 You understand my question?

8 A Yes. I understand that is your question.

9 Q Did you do that when Mr. Thompson asked you that
10 question before?

11 A Yes, I did.

12 Q You didn't mention anything about Maureen;
13 isn't that correct, sir?

14 A That's correct, I did not.

15 Q And he asked you specifically in his question,
16 who you were accompanied by; isn't that correct?

17 A I don't know what the question was at the time,
18 sir.

19 Q Well, was this question asked of you and did you
20 make this answer?

21 THE COURT: Page?

22 MR. QUAGLIATA: Page 24, sir. This is in your
23 direct testimony, "In the course of your duties at that
24 particular time; that is, the early part of the day,
25 middle of the afternoon, will you describe the activity

1 and who you are accompanied by which you undertook."

2 Do you remember Mr. Thompson asking you that question?

3 A I believe that question was asked.

4 Q And did you give this answer "I was introduced
5 to a subject named as Moe and I was accompanied by him to
6 the Jamaica, New York section of the City of New York."

7 A That sounds correct. Yes. Which I was.

8 Q Well, that answer was incomplete according to
9 your testimony today; isn't that right?

10 A It's incomplete, but not incorrect.

11 Q In other words, you knew that Maureen was there
12 but you omitted it from your testimony; is that correct.

13 A That's correct, yes, sir.

14 Q Now, you leave with Moe and Maureen; is that
15 correct?

16 A That is correct.

17 Q Had you ever seen Moe before that date?

18 A No, I did not.

19 Q Had you ever seen Maureen before that date?

20 A No, I had not.

21 Q Were you familiar with the Jamaica area?

22 A Not at all.

23 Q So then, you were being guided by either Moe
24 or Maureen; is that correct?
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A I was being guided by Moe.

Q By Moe. But Maureen was there, wasn't she?

A Yes, she was.

Q Do you remember now that she was there?

A I always remembered she was there.

Q But you left it out of your testimony in the first trial; is that correct?

A I didn't find any need to mention about Maureen.

Q In answer to a question, who you were accompanied by, you didn't find a need to say Maureen accompanied you?

A No. Because I was working with Moe not Maureen.

Q Sir, she accompanied you with Moe, sir, didn't she?

A Yes, sir.

Q And you didn't find any need to state that in answer to the question, who you were accompanied by, on the first trial?

A No, I did not.

Q Is that what you're saying?

A Yes, that's what I'm saying.

Q Now, was Moe giving you directions? Isn't that correct?

A That is correct.

Q Because you were totally unfamiliar with the

Jamaica area of Queens; isn't that correct?

A That is correct.

Q And you stopped at a few different bars; is that right?

A On which visitation are you referring to?

Q The first one, sir. Approximately 3 o'clock in the afternoon.

A Yes. We stopped at approximately three different bars.

Q And, Maureen goes with you to the three different bars?

A No, she did not.

Q Did you drop her off someplace?

A Yes, we did.

Q Was that Bruno's Tavern?

A That's correct.

Q That was approximately what time?

A When we first arrived in Jamaica. We went directly to Bruno's.

Q Did you give Maureen any money?

A No, I did not.

Q Did somebody give Maureen money to buy her bar tab?

A Not to my knowledge.

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Q You leave Maureen at the bar approximately what time, sir?

A When we first got there we had just time enough. We drank one beer and we left her remaining at the bar.

Q Approximately what time was that?

A 3:30 or so.

Q 3:30 in the afternoon?

A Yes.

Q Now, you go from the Jamaica area at approximately 3 or 3:30, 4 o'clock in the afternoon to Westbury; is that correct?

A We, as a result returned to Westbury, yes.

Q You eventually went back to Westbury; is that correct?

A That's correct.

Q Now, when you left on the first occasion from Westbury, did you have money?

A Yes, I did.

Q Was that money that you had for the purpose of making a buy of narcotics?

A Yes, it was.

Q That's on the first occasion; is that correct?

A Yes, it was.

Q Now, you go back to Westbury and you still got

1 the money in your pocket. Am I correct?

2 A That's correct.

3 Q How much money was there?

4 A \$1200.

5 Q Now, the other \$50 or whatever it was, was for
6 expenses. Am I correct you had to buy and bring somebody
7 else a drink or whatever?
8

9 A Yes.

10 Q Now, the money was marked?

11 A It was recorded.

12 Q You knew that?

13 A Yes, I did.

14 Q Would it be fair to say that you left Westbury
15 with the possible purpose in mind in making a buy of
16 narcotics?

17 A That's correct.

18 Q That's why you had the money; is that correct?

19 A That is correct.

20 Q Now, how long have you been working undercover?

21 A Off and on since 1953.

22 Q Have you ever worked with a recording device?

23 A Yes, I have.

24 Q Now, would you -- withdrawn.

25 Did you work with the recording device on that day?

McCoullum-cross

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I think it's August 24, 1971.

3

A No, I did not.

4

Q Now, a recording device, say a Kel transmitter,

5

you tell me if I'm wrong, enables the people in the area to

6

hear your conversation let's say, while you are in the bar;

7

is that correct? And it would also record the conversation

8

for posterity's sake; is that correct, sir?

9

A If it's working properly, perhaps it would work

10

that way.

11

Q If it's not working properly, I would assume

12

it would do nothing, correct?

13

A Ordinarily when you use a Kel transmitter the

14

type you referring to it doesn't work very effectively in

15

a bar because of the jukebox background music.

16

Q But, sir, when you're at the back at the bar

17

you didn't know whether the jukebox would be on or --

18

A Most bars are on.

19

Q Jukebox in the bathroom, too?

20

A No, it wasn't in the bathroom.

21

Q Did you request that you be outfitted with a

22

Kel transmitter?

23

A No, I did not.

24

Q Did anybody have any conversation with you

25

regarding a Kel transmitter?

1 A I believe the -- it was mentioned before we
2
3 left. Before we left the Westbury office a decision was made.

4 Q When you say the decision was made, did somebody
5 else tell you that that was available to you?

6 A I don't know if it was mentioned that it was
7 available or not.

8 Q Did you take part in the decision making not
9 to use it?

10 A No. Because I didn't -- I don't like to use
11 a Kel transmitter to begin with. I feel very uncomfortable.

12 Q You never used one before?

13 A I used one, yes.

14 Q Who made the decision -- withdrawn.

15 Did you say that you didn't want to use one?

16 A No. I didn't want to use one, no.

17 Q In this case the Kel transmitter or the record-
18 ing device would have recorded the transaction that you say
19 took place in the bathroom; is that correct?

20 A Possibly, I can't -- It's only an assumption
21 on my part.

22 Q If it was working it would have recorded that
23 conversation?

24 A Possibly, yes.

25 (Continued on next page.)

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Q Did you tell the FBI agents or somebody that you were working with that you didn't want to use the kel?

A I never told them I didn't want to use it, no.

Q Did they mention to you that you could use it if you wanted to?

A I really don't recall.

Q You said the device was made for you not to use it; is that correct, sir?

A The kel kic was mentioned. Now, who made the decision because of the climate in the clothing, which was being worn at the time, it just wasn't proper to use a kel transmitter at the time.

Q Who made that decision?

A I don't know who made that decision.

Q When you say the "clothing," you are talking about the summertime.

A Yes, that's right.

Q And for instance, if you had a polo shirt on you could see possibly the outline of the kel transmitter.

A That's correct.

Q But if you have a jacket on you couldn't see the outline of the kel transmitter?

A Shouldn't be able to do so, no.

Q Did you have a jacket on?

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A Yes, I did.

3

Q Now, you say you returned to Westbury; is that

4

correct?

5

A Which occasion?

6

Q On the first occasion.

7

A Yes.

8

Q Maureen, you left behind at Bruno's Bar; is

9

that correct, sir?

10

A That's correct.

11

Q Did you remember that you returned to Bruno's

12

Tavern; is that correct, sir?

13

A Yes, I do.

14

Q You say you parked your car. Now, you say you

15

parked your car half a block away; is that correct?

16

A Approximately, yes.

17

Q Now, on the first trial you said you parked

18

where you are to the table; is that correct?

19

A That's correct.

20

Q You repeated that occasion after occasion; isn't

21

that correct?

22

A That's correct.

23

Q At the first trial?

24

A Yes.

25

Q Did somebody refresh your recollection? You

McCoullum-cross

3 1 had parked your car half a block away?

2 A No one refreshed my recollection, no.

3 Q Didn't McElynn tell you that you parked your
4 car half a block away?

5 MR. THOMPSON: Your Honor --

6 THE COURT: You object?

7 MR. THOMPSON: Yes. I believe --

8 THE COURT: I'll permit it.

9 Q Didn't McElynn tell you that he testified that
10 you parked your car a half a block away from the bar?

11 A I discussed the case with Mr. McElynn, yes.

12 Q Didn't he tell you that he testified that you
13 parked your car half a block away rather than where you were
14 to where this table is?

15 A He advised me it wasn't parked in the same
16 location.

17 MR. THOMPSON: Sir?

18 THE COURT: The answer?

19 THE WITNESS: He advised me I wasn't --

20 Q He told you that he so testified; isn't that
21 correct?

22 A I don't recall what he testified to.

23 Q You weren't here but didn't he tell you that
24 he testified that you had parked your car a half a block away?
25

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2 A No. I don't think he told me he testified to
3 that.

4 Q Whatever he told you, did that cause you to
5 change your testimony today?

6 A No, it caused me to cause my recollection to
7 be more exact.

8 Q He jogged your recollection as to where you
9 parked your car; is that what you are saying?

10 A Yes.

11 Q Did you also learn that McElynn did not make an
12 identification because he was too far from the bar? Did you
13 learn that?

14 A Did I learn?

15 Q Because he was too far from the bar.

16 A Yes. I knew he didn't make an identification.

17 Q Did you learn that he testified that your car
18 was immediately or somewhere very shortly in front of his car
19 on the second occasion when you went back?

20 A I had no idea where he was parked.

21 Q Now, you say you returned to Bruno's tavern;
22 is that correct?

23 A Second time, yes.

24 Q Who was in the car with you?

25 A Moe and myself.

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McCoullum-cross

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Q Nobody else?

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A Nobody.

4

Q Is your answer complete in that regard now?

5

A Yes, that's correct.

6

Q Because you know that Maureen was left in

7

Bruno's Tavern; isn't that correct?

8

A That's where we left her, yes.

9

Q Now, you say that when you get there you'd

10

have occasion to see some people outside of the bar. Am I

11

correct, sir?

12

A That's correct.

13

Q Up until this point in your testimony had

14

you ever laid eyes on the defendant?

15

A No, I had not.

16

Q Do you know where Mr. McElynn was when you

17

approached the car on the second occasion?

18

A No. All I know is there were several agents

19

in the immediate area.

20

Q Did you know that he parked his car directly

21

or very, very close to your car behind your car?

22

A I had an occasion in the evening to find out

23

he was close by.

24

Q When did you find that out?

25

A When Moe told me.

McCoullum-cross

Q Moe told you that McElynn parked his car behind your car?

A No. He didn't tell me that.

Q Now, you say that you had occasion to see many, many people; is that correct? When you first get there the second time.

A That's correct.

Q You say there comes a time when you first laid eyes on the man that you say is this defendant; is that right?

A That's correct.

Q Tell the jury what happened.

A As I previously stated he was called out of the crowd of people approximately eight or nine people standing on the corner milling around the corner more or less. He was called over to a generalized area near the New York Boulevard side of the bar.

Q Investigator --

THE COURT: Let him finish telling the jury what happened. Unless you don't want to hear.

Q I want to hear who called him, Judge.

THE COURT: Let him tell it. Is there any left out?

Q Are you finished?

A Not if --

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Q Would you continue, please?

A Yes. He was called by Moe.

Q What happened?

A He came over to where we were. I was introduced to him as Moe's cousin wanting to do business with him. It was relative to buying, making a fairly large-sized purchase of heroin.

Q I'm going to stop you here for one second. Tell me to the best of your recollection who said what. Try to tell it the best you can remember what this man said and what this man said. I don't want to stop you. I want you to try to put everything in that you can remember.

A To the best of my recollection, I was introduced to him, the defendant, as Moe's cousin from Washington, D.C.. At this time I told him I was prepared to buy half a ky of -- ky, that was the expression I used which is a street talk or street jargon for heroin.

Q Let me stop you for one second. Moe introduced you, am I correct?

A That's correct.

Q Does Moe stay there for the remainder of the conversation when you are talking about --

A Not through the entire conversation, no.

Q Would you tell us in your testimony when he

leaves?

A I don't -- I can't recollect. He just drives off primarily one conversation is primarily between the defendant and myself.

Q Does he ~~drive~~ ^{drive} off prior to your mentioning "skag"?

A I don't know. I don't think he does, I can't say.

Q So he stays there, right?

A I don't recall if he does or does not.

Q Would you continue, please?

A And I spoke with him about buying half a ky but I was prepared at this time to buy an ounce to test its validity, its strength, its qualitiveness, its potency and in which the defendant replied that I didn't have to worry, he didn't deal in bad stuff. He only deals in good stuff and it would take six cuts.

Q Is that it or would there be more?

A At this point we started discussing price. He says he usually gets thirteen, fourteen hundred for an ounce.

Q I am going to stop you here for just one second. Was Moe here at this time?

A He wasn't there at this time.

Q You're definitely certain he was gone?

1
2 A This was towards the end of the conversation.
3 I didn't even see him around.

4 Q Would you continue, please, Investigator?

5 A We bickered back and forth about the price.
6 I told him well, I have to get thirteen. I says, all I have
7 is twelve. He says, okay, since you're a friend of Moe's, I
8 will let you have it for twelve.

9 Q Now, this conversation that you have just
10 related takes place outside of the bar; is that correct?

11 A That is correct.

12 Q In relation to your car, could you tell me how
13 far from your car this conversation takes place?

14 A This conversation takes place fairly close to
15 the side entrance or rear entrance of the bar on New York
16 Boulevard. My car is parked approximately a half a block from
17 the rear, the rear of the building of the bar. So, I'm
18 maybe half a block from my car relative to where the
19 conversation took place.

20 Q When you say "half a block," can you tell us
21 in feet approximately as you recall it now? How far your
22 car was from this conversation?

23 A I really couldn't tell you the feet. I know
24 we walked from my car up to the entrance of the door when he
25 called Tommy was at the corner of the intersection. He came

1
2 down to where we were and the conversation was had.

3 Q Was your car visible to you where you had the
4 conversation?

5 A Yes, it was.

6 Q You could see your car clearly?

7 A There were a lot of cars that was the closest
8 parking spot I could get to the tavern. I recall that.

9 Q Was there any spaces closer to your car?

10 A Not that I recall. The street was pretty
11 crowded.

12 Q But you can see where from you had this
13 conversation your car; is that correct? Which was half a
14 block away?

15 A Yes, I could see my car, yes.

16 Q Now, Moe introduces you and see if I got it
17 right. Moe introduces you and he says you're his cousin from
18 Washington.

19 A Yes, that's correct.

20 Q And the first thing you say to this man is
21 that you had never seen before, is I'm interested in buying
22 heroin or something to that nature?

23 A That was the first thing I said. There may
24 have been something said before that because the purpose of
25 my being there was to set Moe up in business.

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Q Sir, but you immediately get into a drug-related conversation; is that correct?

A Yes, that is correct.

Q Immediately?

A Yes.

Q And then you right after you're introduced start talking to this stranger about drugs; is that correct?

A Yes. Because it was already prearranged.

Q And you had never, ever seen that man before that day? Is that correct?

A That's correct.

Q Now, you say, do you go into the bar prior to this leaving or does he go into the bar with you? When I say "he," I mean the man who you now say is this defendant.

A I don't see him come into the bar, no. I go into the bar alone.

Q He tells you stay here and I'll be back?

A No. He directs me to go into the bar and says go in the bar, have a seat or have a drink; I'll be back.

Q So then, you go into the bar?

A That's correct.

Q At the point you go into the bar, Moe is with his girl friend; am I correct?

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2 A I don't know if he was there. I saw Maureen
3 first. I sat down next to her and Moe. He's in and out of
4 the bar most of the time. He's not in my presence all the
5 time.

6 Q So you sit down with Maureen?

7 A Yes.

8 Q Moe comes over.

9 A Or he may have already been there; I don't
10 recall whether he was there already. There were times he
11 was there and there were times he wasn't there. He was moving
12 around the bar quite a bit. He knew everybody in the bar and
13 they knew him. So he was having conversations with a lot of
14 people.

15 Q Then there comes a time the defendant gets
16 back?

17 A The first time I know he's back.

18 Q Yes.

19 A Yes.

20 Q He goes into the bar; is that correct?

21 A Well, I had the understanding he said, I was
22 told by Moe he had been in earlier.

23 Q When is the next time you see the defendant?

24 A Next time I see the defendant is when he
25 tapped me on the shoulder to go into the restroom.

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Q That's the next time you see him?

A Yes, that's correct.

Q Now, up until this time you have never spoken with the defendant in the bar about drugs; am I correct?
In the bar?

A That's correct.

Q This is the first time you have seen the defendant in the bar?

A Yes.

Q Now, when he comes there could you tell me who is with you?

A Maureen and Moe and other patrons who are patrons of the bar who I'm unfamiliar with.

Q You say he tapped you on the shoulder.

A Yes.

Q What happens next?

A He says, let's go into the rest room, the bathroom. I get up off the stool and I follow him in the restroom.

Q Did you ever go in the kitchen?

A I don't recall ever going into the kitchen even though --

Q Sir, do you recall where you went from the bar stool?

1
2 A Yes. When I left the bar stool I went directly
3 into the restroom. I followed the defendant into the rest-
4 room.

5 Q Well, when you say you "don't" recall anything
6 about the kitchen, you were never in the kitchen or were you?

7 A Not to my knowledge, no.

8 Q Do you know if Moe ever said you were in the
9 kitchen?

10 A Do I know?

11 Q Yes.

12 A He says I went into the kitchen but I didn't.
13 I never went into the kitchen.

14 Q Do you know if Moe ever said that this was
15 \$1,100 sale?

16 A No, I have no knowledge of that.

17 Q Did you have knowledge of the fact he said
18 you were in the kitchen; isn't that correct?

19 A He mentioned, brought it to my attention that
20 I went into the kitchen, but I have no recollection of ever
21 going into the kitchen. I would have no reason to go into
22 the kitchen.

23 Q Do you remember anybody handling the drug
24 other than you or the defendant and, of course, the people
25 that you gave it to later?

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A No.

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Q Did Moe tell you that it was his recollection
somebody else gave the drugs to whom you nowsay is the
defendant?

6

7

A That's what he told me. I did not observe
this at all.

8

9

Q But you were there at the same time, you and
Moe at the same occasion, were you not?

10

11

12

A Yes, we were.
Q So now it's your testimony that the defendant
tapped you on the shoulder; am I correct?

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A That's correct.
Q That you go some place.
A To the restroom.
Q You follow him into the restroom.
A That's correct.
Q Where is Moe when you're following the
defendant into the restroom?
A Sitting at the bar.
Q Where was Maureen?
A Also sitting at the bar.
Q Now, you go into the restroom and you got
\$1,200 in marked bills; am I correct?
A That is correct.

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Q You say the defendant takes out a package; am I correct?

A Yes.

Q Did you test it in any way at this point?

A No, I did not.

Q You take the package and you pay him how much money?

A \$1,200.

Q And you make an agreement -- withdrawn.

You want to buy more drugs, didn't you say that to Mr. Thompson; is that correct? You said you wanted to take this for the purpose of seeing if they were good so you can buy more drugs?

A Yes, that's correct.

Q Did you ever mention anything to the defendant in the bathroom about when you were going to buy more drugs?

A Yes. I told him I'd get back to him if I find out the stuff is good.

Q Did you ever see the defendant from that day to this?

A Yes, I seen him.

Q Last trial?

A Yes.

Q Other than the last trial when you saw him in this courtroom, have you ever seen him between that day and the last trial?

A No, I did not. Not physically, that is.

Q Oh, you did see his picture; isn't that right?

A That is right.

Q And you identified the defendant through a picture; isn't that right?

A That's correct.

Q When was that picture given to you for your perusal?

A Sometime in the fall of '71 between September and the beginning of the next year, beginning of '72.

Q So, you'd say it's between September '71 and the beginning of '72?

A Yes. I ^{see} the pictures some time in the fall. It was mailed to me by Agent McElynn.

Q When you received this picture did you know that it was being sent to you for the purpose of your making an identification of the man that you had bought drugs from?

A Yes.

Q You knew that?

A Yes, I did.

Q And so, you expected to see the picture of the man that you had bought drugs from? Am I correct, sir?

A I was asked to identify his picture as the person that sold drugs to me, yes.

Q Now, could I have the picture from the United States Attorney?

By the way, Investigator, how many pictures were sent to you on that occasion?

A One picture.

Q I am going to show you a picture and I am going to ask you to tell us whether or not that's the picture that you made the identification of the defendant from.

A Not the same picture, but it's the same picture but not the -- it's a duplication of his picture.

Q Tell me how it's different from the one you viewed.

A The one I viewed was smaller in dimension.

MR. QUAGLIATA: Now, I call on the United States Attorney to give me the picture that he made the identification from.

MR. THOMPSON: Side bar, your Honor?

THE COURT: Yes.

(Side bar discussion is held out of the hearing of the jury.)

1
2 MR. THOMPSON: Your Honor, this picture is not
3 in the Government's possession. It is in the
4 possession of the witness, in his locker in Buffalo.

5 THE COURT: Yes.

6 MR. THOMPSON: It was sent to him and never
7 returned. I think we've been perusing, using the
8 word identification rather than ascertaining the
9 true name, your Honor.

10 THE COURT: He has the picture in Buffalo in
11 his locker.

12 MR. THOMPSON: Yes, your Honor.

13 THE COURT: Just arrange to get it in here,
14 that's all.

15 MR. THOMPSON: All right.

16 THE COURT: All right. We'll take a ten-
17 minute adjournment.

18 (The following takes place in the presence
19 of the jury.)

20 THE COURT: Take the jury out, please.

21 (The jury is excused at 12:20 p.m.)

22
23 (continued next page)
24
25

IR:jm
TlamR5

1 (Time noted: 12:40 p.m.)

2 MR. THOMPSON: Your Honor, we have contacted
3 Buffalo and the picture is available there. We can
4 take steps to have it brought down, of course, it
5 will take time.

6 THE COURT: Be here tomorrow.

7 MR. THOMPSON: Very well, your Honor.

8 THE COURT: Is that all right?

9 MR. QUAGLIATA: Yes, your Honor.

10 THE COURT: I mean, it's not here so they'll
11 bring it in.

12 MR. QUAGLIATA: As long as I reserve my
13 rights to cross-examination with this witness.

14 THE COURT: You can cross-examine him as to
15 the picture, sure.

16 MR. QUAGLIATA: Thank you, Judge.

17 THE COURT: Bring in the jury. You'll bring
18 it in tomorrow then.

19 MR. THOMPSON: Yes, your Honor.

20 THE COURT: Fine.

21 (The jury is brought in at 12:43 p.m.)

22 THE COURT: You may proceed.

23 (The witness, McCoullum, is on the stand.)

24
25 (continued on next page)

McCoullum

CROSS-EXAMINATION

BY MR. QUAGLIATA (continued):

Q Now, Investigator, subsequent to this sale you said you left Bruno's Bar; is that correct?

A I don't understand the question now.

Q Well, did there come a time when you left Bruno's Bar?

A Yes.

Q That was subsequent to the sale, right?

A Yes.

Q And you left in the same Cadillac, am I correct?

A That's correct.

Q Now, could you tell me who you left with?

A I left with Moe and Maursen.

Q So, there were three of you in the car; am I correct?

A That's correct.

Q Now, you went from there to the hamburger place; is that correct?

A That is correct.

Q And you were met there with Agent McElynn and other agents of the Federal Bureau of Investigation; is that correct?

A That's correct.

McCoullum-cross

Q Did you discuss the case at that time?

A Only I just showed Agent McElynn the package I purchased. We conducted a field test in the parking lot.

Q Did you discuss the man that you had purchased the narcotics from?

A Yes.

Q Did you give him a description at that time?

A I gave him the name as I knew it.

Q And then, from there everybody went to a motel; is that correct?

A Not everybody. Well, Agent McElynn, Maureen and Moe went in Agent McElynn's car and I followed them.

Q Did you make a report regarding this drug sale subsequent to the sale?

A I made a report. I don't know exactly when the report was made.

Q Could you tell me if it was that day or some time later?

A It would have been later.

Q Sir?

A It would have been, would have had to have been later.

Q Well, was there a report made about September 2nd, 1971?

McCoullum-cross

4 A That sounds about right.

 O If I showed you your report would you be sure
as to when it was made?

 A In the bottom left-hand side I believe that
the date is on the bottom and would indicate in particular
when it was probably typed. The date above August 25 would
be more accurate as to the date when the report was made
by myself.

 O I see. In other words, you dictated your
report to -- withdrawn.

 You dictated the report and the report was
then given to somebody in the FBI possible typing pool and
then they transcribed your dictation which makes the body
of your report some time in September 2nd, 1971; is that
correct?

 A That's correct.

 O So then, it's your testimony that you made
the report how long after the day of the sale?

 A I would assume from the report it's there, I
made the report the next day.

 O All right.

 A I dictated the next day ~~when~~ it was typed.

 O And subsequent to your making the report, did
you have the benefit of the speaking with Maureen and Moe

McCoullum-cross

and Agent McElynn?

A I don't recall if I spoke with Moe or not or -- but I definitely spoke with Agent McElynn.

Q And McElynn had with your knowledge, spoken to Moe and Maureen; is that correct?

A I would assume so, he had a daily contact.

Q Now, take you back to the bathroom and your conversation with a defendant outside the bar and your conversation with the defendant inside the bar.

You were face to face with this man, were you not?

A That is correct.

Q You even told Mr. Thompson that the lighting in the bar was pretty good; isn't that right?

A It wasn't bad, it wasn't as bright as the courtroom here.

Q How about outside?

A I would say comparable to what's out in the hallway.

Q Would you consider it fair?

A Yes, it was fair.

Q Outside in the hallway, here?

A Yes.

Q Did you notice any marks on the man's face

McCoullum-cross

that you were speaking with?

A No, I did not.

Q Were you in a position to see those marks, were you not if he had any?

A I would have been in position to see them, yes.

Q How tall was the man?

A How tall?

Q Was the man you were speaking with outside this bar, inside the bar proper and inside the bathroom.

A I know he was slightly taller than I was.

Q Well, how would you describe him today in terms of height?

A I'd say 6'1, 6'2, 5'1, somewhere around there, 6'3 maybe.

MR. QUAGLIATA: I'm going, with the Court's permission that the defendant approach the witness so I can show him the defendant's face.

THE COURT: Show him the defendant's face or his height or what?

MR. QUAGLIATA: Both. His height and his face.

THE COURT: He can stand over there.

MR. QUAGLIATA: Yes, Judge. I want to have him stand up and come over here.

(continued on next page)

McCoullum-cross

BY MR. QUAGLIATA:

Q How tall would you say this man was?

A 6'1, 6'2 perhaps.

Q Perhaps 6'4?

A No, not that tall.

Q See this scar?

A Yes, I see it.

Q Were you in the position to see this scar if he had it when you were speaking with him?

A Yes.

Q Did you see it?

A Not that I recall, no.

THE COURT: Let the record indicate there is a scar on the left chin of the defendant. The scar is not a prominent one and it conforms to the conformation of his chin at that point.

Q Do you see a scar above his left --

THE COURT: And the Court cannot see a cut over there from here, counsel.

MR. QUAGLIATA: Judge.

THE COURT: You better bring him closer for that examination because I can't see that other one at all.

MR. QUAGLIATA: Judge --

McCoullum-cross

THE COURT: I understand, but I'm telling you it can't be seen and I can't see it from here. And turn around and let the jury see it.

MR. QUAGLIATA: I'm going to.

THE COURT: Turn around and let the jury see his face. And show them the point on which you showed the other scar not that one the other one.

MR. QUAGLIATA: The scar I first showed him, this is the scar I'm inquiring about now. If he may, Judge.

THE COURT: Sure, let him go.

The scar on the eyebrow would only be visible with a very, very close examination. It's not visible normally. You may sit down.

BY MR. QUAGLIATA:

Q Did you see any scars on his face?

A I didn't notice any scars on his face, no.

Q Now, you saw the two scars.

THE COURT: I didn't see the two scars. I saw one scar.

O Could I ask the witness --

THE COURT: Yes, go ahead.

Q Did you see one or two scars on the defendant's face?

McCoullum-cross

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A I saw one scar.

Q You didn't see the scar above his eyebrow?

A No, I did not.

Q Did you see that scar at the time the sale went down on August 24, 1971?

A I don't recall.

Q But you were in a position to see that scar because you were in close proximity with that man; isn't that right?

A That's correct.

Q And you say the lighting was good or fair outside, inside and in the bathroom; is that correct?

A It was better inside than outside because at the time I was speaking to him outside, it was becoming dark at the time.

Q Didn't you describe the lighting as being the same type of lighting in the hallway of this courthouse?

A I'm describing the lighting inside the bar not outside the bar.

Q The lighting inside the bar then was the same as outside?

A I would say comparable to it.

Q How about the bathroom about the same thing?

A I would say the bathroom was even brighter.

McCoullum-cross

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Q Was even brighter?

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A Yes.

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Q And were you face to face with this man in

5

the bathroom; is that correct?

6

A That is correct.

7

Q And you did not see any scar?

8

A No, I did not.

9

Q Now, sir, by what name did you know the

10

defendant person that you made the buy from when you made

11

your report? Do you understand the question?

12

A Yes, I do.

13

Q What was his name that you knew him by?

14

A Thomas Mitchell.

15

Q How did you arrive to know him by the name

16

Thomas Mitchell?

17

A I know him as Thomas Mitchell from the

18

informant Moe.

19

Q So then, Moe told you that his name was

20

Thomas Mitchell?

21

A That's correct.

22

Q Did he indicate to you, sir whether or not

23

that was his real name or whether or not that was an alias

24

or whether or not that was his Christian name or otherwise?

25

A Only thing he told me was that he knew him

McCoullum-cross

11 2 to be as Tommy Mitchell.

3 Q When did he tell you that?

4 A He told me that fact while we were in Bruno's
5 waiting for his return.

6 Q After that man appeared and left you had a
7 conversation with Moe; am I correct, sir?

8 A Yes.

9 Q And in that conversation Moe told you that his
10 name was Tommy Mitchell; is that correct?

11 A Yes.

12 Q And he didn't go any further as to say this is
13 his real name or otherwise; is that right?

14 A He just described him as being Tommy Mitchell
15 an associate of Lindsey.

16 Q He said Townsend? He said Tommy Mitchell an
17 associate of Lindsey Townsend? Thank you for that
18 information.

19 Did he tell you his real name was Tommy Mitchell?

20 A As far as he knew it.

21 Q How about Maureen, didn't she tell you his
22 name was Tommy Mitchell?

23 A No. All she knew him was as Tommy.

24 Q She didn't know his last name?

25 A I never asked her. I wasn't working with her

McCoullum-cross

12
1 in particular.

2
3 Q When did you find out for the first time that
4 the defendant's name in this case was Tommy James?

5 A Was when I was sent a photograph by
6 Agent McElynn to Buffalo, New York.

7 Q So, when the photograph was sent to you you
8 were told that this is Tommy James; is that correct?

9 A I don't recall if it came down that particular
10 way. I was sent a photograph to be positively identified
11 and after I made a return call, telephoning to Agent McElynn
12 at the Westbury office, I believe he informed me at that
13 time that his real name was Tommy James.

14 Q And you have no knowledge that Tommy James was
15 the man that you bought drugs from before the Agent McElynn
16 told you; isn't that right?

17 A Not his true name, no.

18 Q Now, did Moe tell you that he knew this man
19 for a long period of time?

20 A Yes, he did.

21 Q He told you that?

22 A Yes, he did.

23 Q Knew him very well?

24 A Yes.

25 Q Did Maureen tell you the same thing?

McCoullum-cross

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A Yes, she did.

Q When for the first time did Maureen tell you that? A date, if you will, sir?

A I don't recall a date.

Q Was it after the sale?

A Yes. I would say it was after the sale, yes.

Q So, that while the defendant was coming back to bring you drugs you had no conversation with Maureen regarding the defendant?

A Not really, no.

Q She never told you that she had known him prior to that date; is that right?

A During that time?

Q Yes.

A I don't think so, no.

Q So, that it was after he was arrested you would say that she told you that she had known him prior to this date?

A I don't recall if it was after he was arrested or not because I wasn't involved in the arrest.

Q You know the arrest took place some time subsequent to this incident; don't you?

A Yes, I do.

Q When after the 24th did you see Maureen again?

McCoullum-cross

14 1 A I would say during that week I saw her
2 periodically in Bruno's tavern.
3

4 Q You went to Bruno's tavern?

5 A Yes, I did.

6 Q Was it in that period of time she told you
7 that she knew the defendant?

8 A If it was, I don't recall.

9 Q When did you see her subsequent to this week
10 after the ^{sale} arrest?

11 A When did I see Maureen?

12 Q Yes.

13 A I would say, perhaps a couple of weeks ago.

14 Q Wasn't it at that period of time that she
15 told you that she knew the defendant?

16 A She did tell me at that time.

17 Q That the first time that you can recollect
18 that she told you that she had known the defendant prior to
19 this sale?

20 A No. She had told me that before that time.

21 Q You remember that?

22 A I remember her telling me before that time but
23 I don't recall when she told me.

24 Q And it would have to be either the week that
25 the sale was made or a few weeks ago; isn't that right? One

McCoullum-cross

15 1 or the other?

2 A It would have been the week subsequent to the
3 purchase.

4 Q Now, you remember that?

5 A Yes, I remember that, because I made it known
6 to her I was looking for her, Tommy.

7 Q Did you ever indicate this in any report that
8 you made out to the Federal Bureau of Investigation that
9 Maureen told you that she knew the man that was involved in
10 this sale?

11 A No.

12 Q By the way, did you ever indicate any further
13 reports to the Federal Bureau of Investigation that Moe
14 told you he had known this man?

15 A I don't believe so, no.

16 Q You never said in answer to one of
17 Mr. Thompson's questions prior to your going to the bar you
18 searched the vehicle, am I correct in saying that?

19 A That's correct.

20 Q Prior to going on the first occasion or prior
21 to going to the first occasion?

22 A Prior to going on the first occasion.

23 Q How about the second occasion?

24 A I don't recall searching the car on the second
25

occasion.

Q What were you looking for when you searched the car?

A Several things. Whenever I use undercover type of vehicle I find that sometimes agents leave reports and they leave identifiable items in a car which can put you on the stoop if you're confronted in that matter. So, I always search a car for weapons, drugs or anything which may, the car may contain.

Q Did you search Moe?

A Yes, I did.

Q What were you looking for when you searched Moe?

A Basically, two things; if he was carrying a weapon and if he had any drugs on his possession.

Q Did you search Maureen?

A No, I did not.

Q When did you search Moe?

A I searched Moe at the Westbury office before our first visit into the street.

Q Did you search him subsequent to that?

A No, I did not.

Q So, then you searched Moe prior to going to Jamaica on the first occasion, but not the second; isn't

McCoullum-cross

that correct?

A That's correct.

Q But you didn't search Maureen at all?

A That's correct.

Q By the way, Maureen is a girl, obviously;
isn't that right?

A Yes.

Q Did any woman search Maureen?

A No, not to my knowledge.

Q Like a female agent, if they have one?

A Not to my knowledge.

Q And you never searched the car prior to going
back there on the second occasion; isn't that right?

A That's correct, I did not.

Q Did Moe have any drugs with him when you
searched him?

A No, he did not.

MR. QUAGLIATA: Now -- Judge, can I stop here.
It's about one o'clock.

THE COURT: All right. We'll stop. The jury
may go down to lunch and you're actually on trial.
Come directly back to this courtroom. Please do not
discuss the case among yourselves or with anyone else
and we'll resume at 2:30.

(luncheon recess taken.)

AFTERNOON SESSION (2:35 p.m.)

THE COURT: All right, bring in the jury.

(The following takes place in the presence of
the jury:)

THE COURT: You may proceed.

MR. QUAGLIATA: Thank you, sir.

GEORGE MCCOULLUM, resumed and testified
further as follows:

CROSS-EXAMINATION

BY MR. QUAGLIATA (Continued):

Q Agent, did Moe ever tell the defendant to come
over to the car?

A No.

Q About 6 o'clock did he?

A No, 6 o'clock.

Q The second time you went to this bar?

A No, we weren't.

Q Sir?

A We were a little further away.

Q Did you ever testify that he did? Were you
ever asked the question on page 40 --

THE COURT: What page?

MR. QUAGLIATA: Sorry, Judge, I got the pages
confused. If the Court will bear with me for one
moment I --

McCoullum-cross

THE COURT: That's all right. See if you can find it.

MR. QUAGLIATA: Ever asked this question on cross-examination last time?

THE COURT: Page?

MR. QUAGLIATA: Page 73, Judge.

THE COURT: All right.

Q "And Moe told Thomas James to come over to the car, right?" And you answered:

"In the vicinity."

The next question was, "Well, you were out of the car at this time?" And your answer "Yes."

The next question was, "Now, there are the three of you on the sidewalk, right? I believe you said your automobile was parked this distance and if my memory serves me correctly, pointing from you to the table. Parked this distance from the entrance of the bar, right?"

And your answer, "Approximately, yes."

Were you asked those questions and did you make those answers?

A Yes, I did.

Q Were you asked those questions on page 20 and did you make those answers? This is on direct examination in answer to Mr. Thompson's questions "Did you arrive at

McCoullum-cross

Bruno's?

"A Yes, I did.

"Q When was that?

"A Approximately 8 p.m.

"Q Will you describe how you arrived, by what mode?

"A I drove up in the vehicle I previously described. Parked directly in front of the tavern. I disembarked along with Moe who was accompanying me.

"Q What did you do after you got out of the automobile?

"A "After I got out of the automobile Moe directed he had motioned to one of the people gathered in front of the tavern -- there were a lot of people."

"Q Could you describe what Bruno's looked like from the time you arrived?

"A No, I can't describe it. It's a tavern and it had the neon beer signs on the window and other than that I can't describe it by color.

"Q How much distance is there, between you, between where you parked your car and the front door of the tavern, approximately?

"A The width of the sidewalk from the curb to the building. I don't recall it.

"Q Would you approximate in some form with regard

1 to this courtroom the distance between yourself and some
2 fixed object here so the jury may know.
3

4 "A I would say from here maybe perhaps to the
5 beginning of that table."

6 MR. QUAGLIATA: I think you indicated that
7 table there but I don't believe it was even that far.

8 Then there was a stipulation between counsel
9 that distance was approximately 12 feet. Were you
10 asked those questions and did you give those answers?
11 Did you give those answers?

12 A Yes, I did.

13 Q Could you tell me, sir -- withdrawn.

14 You mean that Maureen had made a phone call; is that
15 correct, from the bar?

16 A Not from the bar. She made a phone call.

17 Q Did you ever make a phone call from the bar?

18 A Yes, I did.

19 Q And Maureen you said made another phone call?

20 A Yes, she had the first phone call.

21 Q Did you testify to that at the first trial?
22 Maureen made a phone call?

23 A No, I did not.

24 Q Now, sir, you said you were provided with
25 \$1200 in money; is that correct, sir?

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A That is correct.

Q Was that marked money?

A Pre-recorded.

Q I say, in other words, serial numbers of the money were pre-recorded; is that correct?

A That is correct.

Q Was that for the purpose of an identification later, pre-recording?

A Partial.

Q If the money was recovered, you or somebody else could testify that the money that you had passed; is that correct?

A If it were to be recovered, yes.

Q Now, I ask you, sir, directly was the money ever recovered?

A Not to my knowledge.

Q Have you ever seen that money from the day you say you passed it until today?

A No, I have not.

Q Now, sir, do you know whether or not the defendant's fingerprints were found on the bag that you say was passed by him to you?

A I have no knowledge of that.

Q Do you know whether or not fingerprint samples

were taken?

A I have no knowledge.

Q Sir, who was in charge of putting this investigation together? Who was your immediate supervisor?

A It would have been Agent McElynn.

Q Would it be correct to state, sir, that if fingerprints were taken of that bag it would be at his request or at his --

MR. THOMPSON: Excuse me, your Honor. The witness has already answered that he does not know.

THE COURT: That's true. I'll sustain the objection.

Q Do you know whether or not Agent Keller asked that fingerprints be taken of the bag?

A I don't know.

Q Now, how well did you know Maureen at this time of the last trial? Which was February 4, 1975.

A I met her at the same time when I met Moe on August 24, 1971.

Q Did you speak with her subsequent to August 25?

A Yes, I did.

Q Did you meet her on almost a daily basis for the weeks after the August 25th date?

A Not on a daily basis. I had on-going investiga-

1 tions going on at the same time. Periodically, during that
2 week I did see her periodically.
3

4 Q You had conversations with her?

5 A Yes. We spoke to each other.

6 Q On numerous occasions, how often? Give us
7 an idea.

8 A I'd say maybe two, maybe three times.

9 Q Were you familiar with the name?

10 A Only by her first name as Maureen.

11 Q You were well familiar with that name, first
12 name?

13 A That's the only name I knew.

14 Q Do you remember being asked the question,
15 last question --

16 THE COURT: Page?

17 MR. QUAGLIATA: 42, sir.

18 Q Talking about the time when you together at
19 the hamburger stand and Mr. Thompson asked you "Who was
20 present with you at the time with Agent Keller?"

21 And the answer was, "Moe was with me and his girlfriend
22 I think her name was Maureen, I'm not sure."

23 A Was I asked that question?

24 Q And did you give that answer?

25 A Possibly. I don't recall if I gave that

answer or not.

Q Now, do you remember at the last trial being asked to identify the picture upon which you made the identification of this defendant?

A Yes, I do.

Q Do you remember being asked if the picture that was provided to you was the picture that you made the identification of the defendant from?

A I don't know if it was put in and the exact time or not. I don't know how it was phrased, the terminology of the question.

Q Well, do you remember indicating to the Court, to the jury, to the defense counsel that the picture that was provided to you at this time was the picture that you made the identification of the defendant with?

A Yes, I did say that.

Q And that was the picture that I gave you before; isn't that correct?

A That is correct.

Q But that was not the picture that you made the identification with; is that correct?

A It was a copy of the picture apparently.

Q But you didn't indicate that at the last trial?

A No, I did not.

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Q Even when you were introduced, were you introduced to Moe and Maureen approximately at the same time; is that correct?

A Yes.

Q You knew at that time did you not that Moe was a confidential informant for the FBI?

A For the Federal Bureau of Narcotics.

Q Federal Bureau of Narcotics. You did know that?

A Yes, I did.

Q Did you know, sir, whether or not he was a paid informant?

A I have no idea.

Q Was Maureen introduced to you also as confidential informant to the FBI?

A No, she was not.

Q Well, you took Maureen with you to the bar, is that not correct?

A That is correct.

Q Whose decision was that to take Maureen to the bar?

A I don't think it was anyone's decision. She was introduced to me as his girlfriend and she was going along with us. It made my cover much more stable being associated with a girl, another fellow, rather than being two

1 fellows. It was just local and we were waiting to proceed
2 with the investigation.
3

4 Q Sir, she didn't appear, I don't mean to be
5 facetious, somebody must have told her to be in Hempstead
6 or Westbury.

7 A I had no idea she was going to appear.

8 Q Do you know of your own knowledge how she came
9 to be there?

10 A She was brought there by federal agents.

11 Q She was working at that point, the facts in
12 addition to her boyfriend Moe being working with the agents;
13 isn't that right?

14 A No, that is not correct.

15 Q Well, did she know when she left Westbury there
16 was a sale that was supposed to go down?

17 A I'm sure she understood it, yes.

18 Q She did?

19 A Yes.

20 Q And she agreed to that.

21 A It wasn't for her to agree. She would go along
22 with anything her boyfriend told her to do.

23 Q In other words, her boyfriend told her to go
24 and she just accepted by that --

25 A That's what I so assume, yes.

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Q Did you know the basis of Moe's certification, if you will? as a confidential informant?

A I don't understand the terminology, sir.

Q Was he a paid informant, if you know?

A All I know, he was an informant and I didn't know how much money he was receiving or if he received any money at all.

Q Did you know whether or not he was working off a case?

A No, I did not.

Q Did you inquire of him whether or not he was working off a case?

A No. It didn't matter to me one way or the other.

Q They told you to go with him and you went; is that right?

A That's correct.

Q As a matter of fact, you had no control over who you went with or where you went; is that correct?

A That is correct.

Q They told you to do something and you did it. If they told you to go to Bruno's establishment with this person, it's your job to go; is that correct?

A Correct.

2 Q To put it rather blunt terminology, you were
3 by no means calling the shots; is that correct?

4 A Yes. I was calling the shots to certain extent
5 because I had the money.

6 Q But, as to where you went and who you went with
7 you weren't calling the shots?

8 A As to why I went, no. Because I wasn't familiar
9 with the Jamaica area so I didn't know where I was going
10 when I entered Queens area of Jamaica, Queens.

11 Q Now, did you speak to Maureen or Moe on
12 August 25?

13 A I possibly could have. I don't recall if I
14 did or not.

15 Q Could you tell us whether or not when you made
16 your report or dictated your report on August 25, whether or
17 not you had spoken with Maureen and Moe?

18 A I don't believe I did.

19 Q You don't believe you did?

20 A No.

21 Q Had you spoken with Mr. Kelton?

22 A Yes.

23 Q Had he spoken with them?

24 A I don't know if he did or not.

25 MR. QUAGLIATA: Judge, I have no questions at

1
2 this time but I would reserve the right to cross--
3 examination after production of the picture which I
4 understand is in the process of coming.

5 THE COURT: You have completed your cross--
6 examination?

7 MR. QUAGLIATA: Yes, sir, I have.

8 THE COURT: Any redirect?

9 MR. THOMPSON: Yes, your Honor.

10 THE COURT: You may proceed.

11 REDIRECT EXAMINATION

12 BY MR. THOMPSON:

13 Q Investigator McCoullum, do you recall on cross--
14 examination with regard to page 24 Mr. Quagliata read a
15 question to you. Was this the question he read:

16 "In the course of your duties at that particular
17 time, that is, the early part of the day or middle of
18 afternoon, would you describe the activity and would
19 you describe the --"

20 THE COURT: Do you remember that question being
21 read to you?

22 THE WITNESS: Yes, I do.

23 Q And your answer to that question, do you recall
24 this was your answer: "I was introduced to a subject known
25 as Moe and I was accompanied by him to the Jamaica section of

1
2 New York?"

3 A That's correct.

4 Q Also return to the time you approached Bruno's
5 in the evening of August 24th. Will you describe exactly
6 what Moe did as you approached the vicinity in your car?

7 MR. QUAGLIATA: Judge, I am going to object to
8 this. Improper redirect.

9 THE COURT: Well, I think we've been over it
10 and I think it would just be repetitious. The objec-
11 tion is sustained. You may ask the next question.

12 MR. THOMPSON: Your Honor, there was considerable
13 amount of time spent with this witness on --

14 I agree, if you wish.

15 THE COURT: Yes. We'll take a sidebar.

16 MR. QUAGLIATA: Judge, prior to having the
17 sidebar if the United States thinks it's important
18 I'll withdraw the objection.

19 THE COURT: All right. Go right ahead.

20 Q We describe exactly what Moe did first. What
21 he actually did.

22 A First thing after disembarking from my car he
23 waved over and called over to the defendant Mr. James and
24 which Mr. James came over to where we were. He walked over
25 and he introduced me as his cousin from Washington, D.C. and

2 at this time I recall Mr. James asking what I wanted to do.
3 I asked him, I wish to have a ki, but before doing so I wanted
4 to purchase an ounce first to test its quality and strength-
5 wise.

6 He told me he didn't deal in bad goods and it would take
7 six cuts.

8 At this particular time we dickered with the money and
9 agreed to a price of \$1200. He wanted me to front the money
10 first and come back with the stuff, which I refused to do.
11 So, at this point he told me to go inside the bar and wait
12 for him, which I did.

13 Q Front, what does the "front" mean?

14 A He wanted me to give up the \$1200 to him and
15 then he was going to come back with the merchandise.

16 Q During this conversation can you describe the
17 manner in which you conducted yourself?

18 MR. QUAGLIATA: Judge, I'm going to object to
19 this.

20 THE COURT: Well, I think it's repetitious at
21 this point and I think it should be sustained.

22 MR. THOMPSON: All right. Your Honor, I'll
23 withdraw the question.

24 I have no further redirect.

25 THE COURT: Any re-cross?

MR. QUAGLIATA: Yes, sir. I have one more question.

RE CROSS EXAMINATION

BY MR. QUAGLIATA:

Q Did you ever show anybody money outside of the bar?

A I believe I showed -- I showed him a wad of money outside of the bar, yes.

Q Do you remember testifying to that in answer to Mr. Thompson's questions about fronting money the first time?

THE COURT: Read it. Why don't you read it if that's what he testified to, read it to him.

MR. QUAGLIATA: Judge, I'm asking him what he testified to in this trial.

THE COURT: You know you're on re-cross and I don't know exactly where you're going and --

MR. QUAGLIATA: You're right, Judge. I withdraw the question, you're right.

THE COURT: All right. Finished with this witness?

MR. THOMPSON: Yes, your Honor.

THE COURT: You may step down, and thank you.

(The witness was excused.)

(Continued on next page.)

DePace-direct

MR. THOMPSON: Your Honor, may I ask for a brief recess?

THE COURT: All right. Take the jury out for a ten-minute break. Please do not discuss the case.

(The jury is excused at 3:00 p.m.)

(The jury returns to the courtroom at 3:10 p.m.)

THE COURT: You may proceed, Mr. Thompson.

MR. THOMPSON: Thank you, your Honor. The Government calls Maureen DePace.

MAUREEN DePACE, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. THOMPSON:

Q Will you please state your full name?

A Maureen DePace.

Q Now, please speak loudly and address your answers and look at the jury.

Will you please tell us how old you are?

A 28.

Q Where were you born?

A In Brooklyn.

Q How far did you go in school?

A Graduated high school.

DePace-direct

3

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Q Are you married?

3

A I'm divorced.

4

Q When were you divorced? For about how many

5

years?

6

A Quite a few, about nine, ten years.

7

Q How long did you, your marriage last before

8

the divorce?

9

A Six months.

10

Q Do you recall how old you were when you were

11

married?

12

A I had just turned 18.

13

Q Have you ever been convicted of a crime?

14

A I pleaded guilty to petit larceny in 1969.

15

Q Where, which court?

16

A Nassau County.

17

Q What sentence did you receive after you pled

18

guilty?

19

A I got probation, which a few months later my

20

father turned me in for using narcotics. I was -- I was

21

sentenced to probation and a few months afterwards my father

22

turned me in for using narcotics and I was violated and I

23

was sentenced to a year in Nassau County Jail.

24

Q For having violated --

25

A Violation of probation.

1
2 Q When you say "He turned you in for using
3 narcotics" what narcotic were you involved with?

4 A Heroin.

5 Q What type of a habit did you have?

6 A At that time?

7 Q Yes.

8 A I guess about \$50 a day.

9 Q Was there any connection between your habit
10 and the crime of petit larceny that you pled guilty to?

11 A Yes.

12 Q What was that?

13 A Well, I was stealing in order to maintain my
14 habit and to get the money for my habit.

15 Q Now, bring you a little bit closer in this
16 point and time. When were you released from the jail
17 sentence for violating probation?

18 A In April of '70, 1970.

19 Q 1970. Do you know an individual named Moe?

20 A Yes.

21 Q How long have you known Moe?

22 A Since 1968.

23 Q 1968. After you were released from the
24 County Jail what type of release did you have?

25 A Conditional release.

1
2 Q What was your status with your drug habit at
3 that point?

4 A When I came out I continued to use drugs.

5 Q Do you use drugs now?

6 A No. I'm on methadone.

7 Q When did you stop?

8 A Beginning of '72.

9 Q Okay. Now, are you familiar with an establish-
10 ment known as Bruno's Bar?

11 A Yes.

12 Q Where is Bruno's Bar located?

13 A In South Jamaica on the corner of New York
14 Boulevard and South Road.

15 Q And how familiar are you with it? How many
16 times had you been to Bruno's? When did you first begin to
17 go there?

18 A Well, I guess from 1970 or the middle of '69 to
19 1972, I was there almost every day.

20 Q Were you in Bruno's on the night of August 24,
21 1971?

22 A Yes.

23 Q Is there anyone present in court at this time
24 that you recognize as having also been at Bruno's on that
25 night?

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A Yes.

Q Who is that, please, and if you will, point him out.

THE COURT: Indicating the defendant. He is standing at this point.

Q Do you know this individual's name?

A Well, I know him as Tommy.

Q Can you describe how he was dressed on that evening?

A Blue and white striped polo shirt.

MR. QUAGLIATA: Judge, I am going to object to this unless we can establish a time.

THE COURT: Well, I think we have established a time. It's August 24th that he's questioning her about.

MR. QUAGLIATA: On that date, though, Judge?

THE COURT: Well, now the objection is overruled. I guess he was wearing the same thing all night. We can ask her if he changed that night. I mean that might satisfy your question.

Q I can be more particular, your Honor.

When did you first arrive at Bruno's on that date?

A Middle of the afternoon, I guess it was around

1
2 3:00.

3 Q How did you get to Bruno's?

4 A I was driven there by George and Moe was in the
5 car. We left Westbury and went to Jamaica.

6 Q What kind of car did you ride in?

7 A Cadillac Eldorado.

8 Q Do you know George's full name?

9 A McCoullum.

10 Q What happened when you first arrived at Bruno's
11 in the afternoon? What did you do?

12 A We went in the bar and I stayed and Moe and
13 George left.

14 Q At any point later on did you see George or Moe?
15 About what time, if you can remember?

16 A I guess it was around 7:00.

17 Q Where were they when you first noticed them?

18 A I was sitting in the bar and I heard Moe's voice
19 outside on New York Boulevard. I went to the door to look
20 and saw Moe was out there and George was talking to Tommy.

21 Q All right. How was Tommy dressed when you saw
22 him then?

23 A He was wearing a blue and white striped polo
24 shirt and brown pants.

25 Q And did you hear any of the words Tommy said to

George?

A I can't remember exactly, but I heard Tommy say something about money and that's what made me wait inside the bar for them to let them finish their conversation.

Q How long did you wait inside the bar before you saw them?

A About five or ten minutes and then Moe and George came in.

Q Where were you while you were waiting?

A I was sitting at the bar. But right by the side entrance on New York Boulevard.

Q What did you see happen next?

A Well, we were waiting in the bar for about an hour and George and Moe and myself, about an hour. Tommy came back in and I heard him tell Moe that he didn't want to do anything because there was too many police outside.

Q Where were you when you heard this?

A Sitting at the bar.

Q Where was Tommy when he said it?

A Standing right in back of me.

Q What happened next?

A George gave me a dime and told me to go outside, make a phone call from a public phone.

Q All right. Did you use the dime?

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A Yes.

Q After you completed the call what did you do next?

A I went back in the bar.

Q Where in the bar did you go to?

A Same place I was sitting, towards the side entrance, towards the back of the bar.

Q What did you do when you got at the back of the bar?

A Sat down.

Q What happened next?

A A few minutes later Earl came in, sat near Tommy.

Q Where was Tommy at this point?

A A few seats away from us toward the southward part of the bar.

Q Do you know what's at the other end? Could you hear what Tommy was saying at that point?

A No.

Q Did you see anything happen at that point?

A Not right then.

Q What happened next?

A Tommy, George and Moe walked towards the back of the bar. I don't know if it was the kitchen or bathroom.

1
2 Then, as Tommy walked back by me and I knew what was -- well,
3 George was there for, so I was watching Tommy to see what
4 would happen. He walked back to the girl and she gave him a
5 plastic bag that had white powder in it. Then, Tommy walked
6 past back me to George and they went in the kitchen or the
7 bathroom.

8 Q What was the next thing you saw happen?

9 A A few minutes later George came back to the
10 other end of the bar to Moe and myself and he said everything
11 is all right. He got it and let's go.

12 We went out and we walked to the car and got
13 in the car and we met Larry and some other agents at a
14 hamburger stand where we got out of George's car. We got out
15 of George's car and got into Larry's car and he drove Moe and
16 I to a motel.

17 Q When you arrived at the motel what did you do?

18 A Before we left Larry searched my pocketbook.
19 He had me empty my dungaree pockets and then I got out of the
20 car.

21 Q Who got out of the car with you?

22 A Moe.

23 Q Where did you go when you went to the --

24 A To the motel? That's where we were staying.

25 Q Could you describe your relationship with Moe?

1
2 A He's my boy friend. He has been for quite a few
3 years.

4 Q Now, other than what Tommy was wearing that
5 night can you give us a physical description of how he looked?
6 His build.

7 A Well, he's tall, thin, and he had a high process.

8 Q What do you mean by "high process"?

9 A His hair was straightened and it had a lot of
10 height on top.

11 Q When did you first learn that this individual
12 who you saw talking about George on the sidewalk that his
13 name was Tommy? When did you first learn that name?

14 A I guess late '69 or beginning of '70, must
15 have been late '69.

16 Q How often had you seen this individual, Tommy?

17 A I saw him just about every time I went up to
18 the bar he was there either coming or going.

19 Q This was Bruno's Bar?

20 A Yes.

21 Q Where you spent numerous days for a year, year
22 and a half before?

23 MR. QUAGLIATA: Judge, I would object.

24 THE COURT: That's leading. I'll sustain the
25 objection.

1

2

Q What county do you reside in?

3

A Nassau County.

4

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MR. THOMPSON: Thank you, your Honor. I have no further questions.

6

7

THE COURT: Cross-examination by the defendant's attorney?

8

CROSS-EXAMINATION

9

BY MR. QUAGLIATA:

10

11

Q Were you ever known by any other name but Maureen DePace?

12

13

A A lot of people call me Mary instead of Maureen. Some people think my last name is Barry.

14

15

Q Were you ever known as Maureen LaVine?

A That was my maiden name.

16

17

Q When were you arrested? in 1968; is that right?

18

19

A I think it was either -- must have been the end of '68. I was sentenced in the beginning of '69.

20

21

Q Do you know what you were arrested for?

MR. THOMPSON: Your Honor, I object. The witness has testified.

22

23

24

THE COURT: I think we've gone over that; petit larceny and she got probation and her father turned her in.

25

MR. QUAGLIATA: Judge, that's not what she was

1
2 arrested for.

3 THE COURT: You're bound by her answer, counsel.

4 MR. QUAGLIATA: That's right, but I didn't get
5 an answer, Judge.

6 THE COURT: I'm sorry?

7 MR. QUAGLIATA: I didn't get an answer, yet.

8 THE COURT: What were you arrested for? What
9 she was arrested for? It's what she is convicted for,
10 counsel, not what she's arrested for. It's the
11 conviction, we are not talking arrests, we are talking
12 convictions.

13 The objection is sustained and don't answer that
14 question.

15 Q Could you tell me when your relationship with
16 Moe began?

17 A I believe it was in 1968.

18 Q This is after or before you got out of Nassau
19 County Jail?

20 A That was before I went in Nassau County Jail.

21 Q Then your relationship continued with him after
22 you got out, after you did the year?

23 A Yes.

24 Q How would you describe your relationship with
25 him? When you say girl friend, what do you mean? You live

1
2 with him?

3 A Yes, we live together.

4 Q Are you divorced right now?

5 A Yes, I am.

6 Q And in other words, you live in the same house
7 with him?

8 A Yes.

9 Q Have you been living with him up through '72
10 and '73 and '74?

11 A There were short periods where we weren't
12 together.

13 Q Now, you're living with him again?

14 A Yes.

15 Q Did you discuss this case with him before you
16 testified today?

17 A We may have talked about it.

18 Q How many times would you say you discussed it?

19 A Not many. When we came here waiting to testify.

20 Q And after or before you came here waiting to
21 testify, you never went over the facts of what happened?

22 A To go over the facts, no. In fact, the only
23 thing we talked about, I was nervous to come into the
24 courtroom and testify and he told me don't be nervous. Just
25 tell what happened.

1
2 Q Do you realize that Moe had a series of problems
3 with the law?

4 A Yes.

5 Q You are familiar with that?

6 A Yes.

7 Q Do you realize or is it your understanding the
8 FBI helped him with his problem?

9 A I know they helped to get Moe on methadone.

10 Q And are you familiar with what he -- they gave
11 Moe?

12 A Not everything.

13 Q Some things you are familiar with?

14 A Yes.

15 Q And was it your idea to come here and testify
16 or was it Moe's?

17 A I was subpoenaed here.

18 Q I see. But after you discussed the subpoena
19 with Moe, did you not?

20 A Well, I told him that I had it.

21 Q Did he tell you that he wanted you to come and
22 testify?

23 A He didn't say either way. He just told me not
24 to be nervous and that's all.

25 Q Could you tell me whether or not the years

1
2 that you have been with Moe, if you know, if the FBI gave Moe
3 any money?

4 A I don't know.

5 Q You're not familiar with that at all?

6 A No.

7 Q Do you know of any cases that like might
8 possibly '71 or '70 or whenever that they helped him with a
9 case?

10 A Yes.

11 Q You knew. Would you tell me what your under-
12 standing of what was done for him was?

13 A I believe they helped get him out of jail one
14 time and '71 --

15 Q Is that the only thing you know about?

16 A Yes.

17 Q You don't know about --

18 A And they helped get him on methadone, same as
19 me.

20 Q I see. You don't know about any money he
21 received.

22 A No.

23 Q How about any other help, are you familiar with
24 that?

25 A Excuse me?

1
2 Q Are you familiar with any other help they gave
3 him?

4 A No.

5 Q You say you were in the bar; is that correct?

6 A Yes.

7 Q You say that -- withdrawn.

8 Do you remember where the car was parked at
9 about 7:00 o'clock as you described it after Moe and George
10 got there?

11 A I know where it was when we left. I wasn't
12 with him when they came.

13 Q Did you see the car?

14 A I didn't look for it. I just looked out the
15 door and that's where George and Tommy were standing.

16 Q You left with George?

17 A I know where it was when we left.

18 Q Where was it?

19 A It was down New York Boulevard and we came out
20 of the bar on the side and walked down New York Boulevard.

21 Q How far down New York Boulevard?

22 A I guess about a half a block.

23 Q I see. Did you see any other cars around there?

24 A Sure, there were other cars there.

25 Q You mean like Larry's car?

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A I knew it was in the area but I didn't look for it.

Q You didn't see Larry's car?

A Not right then.

Q You went into George's car which you say was about half a block away.

A Yes.

Q When you got -- when George and Moe came into the bar was Tommy with them?

A No.

Q They came in alone?

A Yes.

Q Did you see any conversation outside?

A Yes.

Q Do you know what the conversation was?

A No. I just heard Tommy mention something about money and that's why I waited in the bar for them to get finished.

Q Do you remember any words?

A Something about -- I don't need your money, I'm -- it doesn't mean that much to me.

Q Do you remember any of George's responses?

A No.

Q George is Agent McCoullum, correct?

1

2

A Excuse me?

3

Q George is Investigator McCoullum?

4

And Larry is Agent McElyan?

5

A Yes.

6

Q You're on a first-name basis with them, both of

7

them?

8

A Yes.

9

Q Could you tell me there came a time when Larry --

10

withdrawn.

11

There came a time when George and Moe go into the

12

bar, right?

13

A Yes.

14

Q Could you tell me what happened then in terms

15

of who is where?

16

A George, Moe and myself were sitting towards the

17

end of the bar right by the side door entrance, the New York

18

Boulevard entrance. And we waited about an hour and then

19

Tommy came in.

20

Q What did Tommy do when he came in?

21

A I heard him tell Moe he didn't want to do

22

anything; there were too many police outside.

23

Q Where was George when he said that?

24

A George was sitting at the bar.

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Q Was he in earshot of this conversation?

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A He wasn't that far away.

Q Well, was he close enough so that he could have heard it?

A I don't know.

Q Well, how far away was he?

A Not more than two stools.

Q Now, do you remember what Moe told him?

A I don't remember what Moe said.

Q Do you remember any other conversation?

A Not right then. Not between -- not that I heard Tommy say.

Q What happened next?

A Tommy went back to his friend by the bar, then George, myself and Moe were talking and that's when George told me to make a phone call and I went outside the bar across the street to the pay phone and made a phone call.

Q Upuntil the time you left to make the phone call Tommy was by himself at the bar?

A There were other people in the bar.

Q Was any girl that you mentioned with him?

A Not at that time.

Q When you came back where were the people in relationship to the bar?

A Which people?

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Q Moe, George and Tommy.

A Tommy was more towards the front of the bar and George and Moe more towards the back of the bar.

Q How long would you say Tommy was there before you --

A I just went out to make the phone call and came right back in.

Q Now, you say Tommy was there?

A Towards the front of the bar.

Q Where were the other people, George and Moe?

A Toward the back of the bar a few seats past Tommy.

Q I see. Could you tell me what happens next?

A Little while later a girl came in, sat down by Tommy and Tommy came, he walked behind me and him, George, and Moe walked toward the back of the bar. Then Tommy went back towards the girl again and I was watching to see what was happening because I knew something was going on. I saw the girl hand him a plastic envelope with white powder in it.

Q Where was George when this white powder was handed from the girl to Tommy?

A He was in the back towards the back of the bar where the three of them had walked originally.

Q Then, well, how far was the girl and Tommy from

1
2 George when she handed him the envelope?

3 A About the equivalent to how far eight stools
4 would be.

5 Q Was there anything that blocked George's vision
6 from the girl and Tommy?

7 A I don't know.

8 Q Eight stools is what? About eight feet,
9 approximately?

10 A About, maybe.

11 Q Where in relation to you in this bar did the
12 girl hand Tommy this envelope?

13 A She was about two seats away from me. I was
14 standing facing the bar and she was about two seats away to
15 the left of me where George was to the right of me.

16 Q I see. But you saw a package pass from the
17 girl to Tommy?

18 A Yes.

19 Q By the way, did Tommy, George and Moe come
20 into the bar together?

21 A No.

22 Q They came in at separate times?

23 A Yes.

24 Q Who came in first?

25 A George and Moe came in first.

2 Q And Tommy came in later?

3 A About an hour afterwards.

4 Q And he sat about eight stools away from you,
5 you said?

6 A No. He was just a few stools away from us but
7 he was more toward the front of the bar. We were more toward
8 the back of the bar.

9 Q So, where was Moe when the girl passed the
10 envelope to Tommy?

11 A Moe had walked back by me. I guess because
12 when I turned around Moe was standing by me.

13 Q Did he see you ^{this} pass?

14 A I don't know, but I mentioned to him he just
15 got it.

16 Q Was George there when you mentioned that?

17 A George was still sitting where the three of
18 them had walked to originally.

19 Q He was in a position to see the pass?

20 A I don't know if people were blocking his view
21 or not. I don't know what he saw.

22 Q Did you mention it to George?

23 A George wasn't by me at the time.

24 Q I mean, subsequent to that.

25 A I might have mentioned it after we got back in

1
2 the car to go home. I might have mentioned it that the girl
3 gave it to him, I don't remember.

4 Q Then you say Tommy got up and went to George and
5 Moe?

6 A No. Moe was back by me at the time. Tommy
7 just got the package he didn't even sit down. He got the
8 package and he turned around again, walked back behind me,
9 back to George and he went into the -- I don't know if it was
10 the kitchen or the bathroom.

11 Q Three of them together?

12 A No. Moe was still by me.

13 Q Who walked back towards the kitchen?

14 A Tommy.

15 Q Tommy and who?

16 A Tommy by himself.

17 Q Walked where?

18 A Back to George.

19 THE COURT: Some instances you're mis-
20 interpreting because it's perfectly clear she's made
21 it perfectly clear just how this thing happened.
22 That's the second time she's gone over that story.

23 But you hold up your fingers three when there
24 is two. You make different gestures which are not
25 consistent with what this woman is saying. But you go

1
2 right ahead and have your cross-examination, go right
3 ahead.

4 MR. QUAGLIATA: Judge, I believe I am honestly
5 trying to get --

6 THE COURT: Counsel, I'll read the testimony to
7 you if there is a problem. But I'm telling you it's
8 not proper that way. But you go right ahead.

9 Q There was, explain to me exactly what happened?

10 A From when?

11 Q From when you see this girl pass the package to
12 Tommy where the people are, what happened?

13 A Moe was standing by me, George was still waiting
14 toward the back of the bar either by the kitchen door or
15 bathroom door. I forget now. Tommy got the package from the
16 girl standing around, walked behind me past me again back to
17 George. Moe was standing by me and Moe wasn't with them.

18 Q Okay. Do you remember seeing what happened
19 between George and Tommy?

20 A They went in either the kitchen or a bathroom,
21 I forget which one. I couldn't see that.

22 Q Do you know if Moe saw what happened?

23 A Moe was standing right by me. I don't know what
24 he saw but he was standing right by me.

25 Q What happened next?

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2 A A couple of minutes later George and Tommy
3 walked out and George said he got it. Everything was all
4 right. We went out to the car and we got in the car and we
5 drove. We met Larry and some other agents at a hamburger
6 stand and we got out of George's car into Larry's car.

7 Larry drove us to the motel where we were
8 staying at. Larry searched Moe and he searched my pocketbook
9 and told me to empty my pants pockets and we left.

10 Q But could you explain to me how you were
11 uncertain as to whether it was the bathroom or kitchen that --

12 A I forget which door, which room they went in.

13 Q Are they close by?

14 A Yes. They are right by each other.

15 Q Do you remember having a conversation with Moe
16 as to whether or not he had seen which door they went in?

17 A No.

18 Q You don't?

19 A No.

20 Q Could you tell me what happened? Did you see
21 Tommy leave the bar?

22 A I saw him walk back past me but then we left.
23 George said we got it and we left with George.

24 Q Could you tell me for the first time when it
25 was you heard the name Tommy James?

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A I know I heard it from Larry. I don't know if it was when he showed a picture of Tommy and I don't know if it was right after he arrested him or what. I know I heard it from Larry.

Q Was that the first time that you had heard the name?

A The last name, yes.

Q Did you ever hear the name Tommy Mitchell?

A I heard that from Moe.

Q Did you ever hear the name Tommy -- withdrawn. Did you -- withdrawn again.

Do you remember anybody asking you what the defendant's last name was?

A I don't know if they asked me but I never knew his last name until Larry told me.

Q Do you know if Moe knew his last name?

A I don't.

Q Could you tell me to the best of your knowledge if there is anything the FBI is doing for Moe now?

A I don't know.

MR. QUAGLIATA: I have no further questions.

THE COURT: Any redirect?

MR. THOMPSON: No, your Honor.

THE COURT: You may step down.

1
2 (Witness excused.)

3 THE COURT: Do you wish to call --

4 MR. QUAGLIATA: Judge, I have an application.

5 THE COURT: Take the jury out.

6 (The jury is taken out at 3:45 p.m.)

7 (The following takes place out of the presence
8 of the jury.)

9 MR. QUAGLIATA: Sir, my application is for a
10 mistrial in this matter. Your Honor has interrupted me
11 on two separate occasions. One, when I was in the
12 process of cross-examining Agent George McCoullum and
13 when your Honor interjected and said certain scars
14 that were on the defendant's face were not visible.
15 I think that was improper.

16 And the second motion and more recently, your
17 Honor interrupted my cross-examination of the girl
18 and intimated I believe that I was trying to manipulate
19 the witness into saying certain things.

20 Now, Judge, let me finish.

21 THE COURT: Go right ahead, go right ahead.

22 MR. QUAGLIATA: Or doing certain things that
23 were inconsistent with the truth. Now I would like to
24 state to the Court right now that I did not under-
25 stand in my own mind what the situation was and what

1
2 her testimony was. I was trying to get at it exactly
3 what it was.

4 Your Honor made the statement in the presence of
5 the jury I think it was highly prejudicial to the
6 defendant and for that reason, I am going to ask for a
7 mistrial.

8 THE COURT: Well, counselor, in the first
9 place it was your application that brought Tommy James
10 in front of the jury for the purpose of displaying the
11 scars. That was your application.

12 Now, in connection with that particular
13 application you were saying certain -- the Court
14 wanted the record, the record to in some way show what
15 these scars were. And you, in his left eyebrow, you
16 made a statement as to the fact there was a scar and
17 I haven't see that scar yet.

18 THE DEFENDANT: Your Honor, I do have a scar.

19 THE COURT: I am sure you have. I am sure you
20 have but it's not visible. It's not visible.

21 Now, as far as what you did in front of the
22 jury, you may have been doing it unconsciously or
23 unknowingly or you may not have comprehended what was
24 being responded to you by that witness. But at one
25 point just after she told you there were two people,

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2 you put up three fingers and asked another question
3 seeking to elicit from that witness the fact there were
4 three. When she had just told you there were two
5 people there.

6 MR. QUAGLIATA: Judge, in all consciousness --

7 THE COURT: You were --

8 MR. QUAGLIATA: I don't understand what you're
9 talking about, Judge. I can't remember what you're
10 talking about.

11 THE COURT: Maybe you did it unconsciously and
12 the application is denied. You may have done it
13 unconsciously and you may not have been comprehending
14 what the witness had said to you. But the Court
15 cannot permit you to make gestures or to make statements
16 which are inconsistent with what you are being told
17 directly. Directly at that point by a witness.

18 MR. QUAGLIATA: Well, Judge, I don't even know
19 and I'm telling you as a member of the bar, I don't
20 know what your Honor is referring to. I don't
21 remember putting up three fingers.

22 THE COURT: That was your left hand; that was
23 your left hand and you put up those three fingers.
24 The witness had just told you there were two people
25 and you put it up like this and you asked the question.

1
2 Your left hand, you asked the question of the witness
3 and this is very prejudicial. It should not be done.

4 MR. QUAGLIATA: Judge, but Judge, I don't know
5 what you're talking about. I don't remember doing it.

6 THE COURT: If you don't remember doing it,
7 then the next time try not to do it.

8 MR. QUAGLIATA: Well, Judge, the fact of the
9 matter is now you made a statement in the presence of
10 the jury that makes it impossible for this defendant
11 to receive a fair trial. And I am going to ask you to
12 declare a mistrial and let's start over with another
13 jury.

14 THE COURT: The application is denied. Ready
15 to proceed?

16 MR. THOMPSON: Yes.

17 MR. QUAGLIATA: Just so we could round out the
18 record, I would like to see if Mr. Thompson knows
19 what you are referring to so that maybe I can be
20 enlightened as to what happened.

21 THE COURT: At the time it happened you were
22 standing directly in front of Mr. Thompson. I don't
23 know if he was looking at you or if he saw you. But
24 I most certainly did and you were standing directly in
25 front of Mr. Thompson at that time.

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2 MR. QUAGLIATA: Judge, all I can say, I have no
3 recollection certainly it was never my intention to
4 do any such thing. I don't know very honestly, Judge,
5 if what your Honor saw was what happened. I don't --

6 THE COURT: I know it was what happened. I
7 know it was what happened. Regardless of whether you
8 know it or not, I saw you. I saw you. And this was
9 behind the question where the witness stated directly
10 there were two people and you raised up three fingers
11 and asked her and repeated the question and repeated.

12 MR. QUAGLIATA: Judge, the indication that
13 this jury must have is that I am trying to deceive the
14 witness or trying to deceive the Court or trying to
15 deceive the jury, Judge, and I can tell you that I
16 don't remember doing what your Honor says I did. And
17 I think it was tremendously improper for you to judge
18 on the situation the way that you did.

19 THE COURT: Because it was that prejudicial and
20 it was that much of a distortion of the truth that I
21 felt no other way to proceed. It was that much of a
22 distortion of the truth.

23 MR. QUAGLIATA: Well, Judge, I hope you realize
24 that if the witness says there were two people, if
25 she said it as clearly as what your Honor seems to have

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2 understood it --

3 THE COURT: No question.

4 MR. QUAGLIATA: Then the jury must have
5 understood it. They must have thought I was an idiot
6 by putting up three fingers.

7 THE COURT: I don't know what the jury thought.

8 MR. QUAGLIATA: Neither do I. But I do know
9 what they think now, Judge. They think that you think
10 I personally manipulated that witness trying to
11 convince the jury.

12 THE COURT: Counselor, counselor --

13 MR. QUAGLIATA: Don't you see the position I'm
14 in?

15 THE COURT: The testimony of this witness is
16 completely consistent on cross, on direct and on
17 cross. The testimony of this witness is consistent
18 and it may be, it may be that the testimony of this
19 witness may be a problem for -- I don't know.

20 MR. QUAGLIATA: It is. I couldn't understand
21 it. That's why I kept asking the lady questions.

22 THE COURT: I certainly understood it.

23 MR. QUAGLIATA: Judge, that doesn't mean I
24 understood it.

25 THE COURT: If you don't, maybe I should give

1
2 you a re-reading so that you can understand it.

3 MR. QUAGLIATA: Judge, whatever you should have
4 done I don't think you should have done in the presence
5 of the jury and I could assure this Court from lawyer
6 to a judge that never in the time that I first
7 practiced would I pull a stunt like that.

8 THE COURT: Well, it may be, it may be that the
9 Court was in error, I agree with you, in part. But
10 the actions were so pointed and so directed that it was
11 inconsistent. It was inconsistent with a proper
12 approach to the witness.

13 MR. QUAGLIATA: Judge, if we read back the
14 testimony it's obvious that I did not understand what
15 this last witness was saying. I just didn't understand
16 it.

17 THE COURT: The application is denied. Are you
18 ready for the next witness?

19 MR. THOMPSON: Yes, your Honor.

20 THE COURT: We'll proceed. Bring in the jury.

21 MR. QUAGLIATA: I ask now that we adjourn
22 until tomorrow morning.

23 THE COURT: No. We have listened and we
24 haven't gone this much today. We have a witness here
25 and I see no reason -- now, if you want to adjourn after
he's through with his direct I may consider that. But

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2 I don't see why we can't finish a witness today.

3 MR. QUAGLIATA: Fine, Judge. I can't proceed
4 because I'm upset. Inside of me I am upset, I can
5 tell you that right now. If your Honor would grant
6 the motion to continue my cross-examination for
7 tomorrow morning, then I would appreciate that.

8 THE COURT: All right. Put the direct on.
9 He has cross-examine tomorrow.

10 Have you got a witness?

11 MR. THOMPSON: Yes, your Honor.

12 THE COURT: Bring the witness in.

13 THE DEFENDANT: Your Honor.

14 THE COURT: No, sit down.

15 THE DEFENDANT: Wait a minute. I don't believe
16 my lawyer represents me. I don't believe that he can
17 represent me being the way that he is right now. I
18 don't believe that he can do it. That's my feeling
19 toward him. I don't believe --

20 THE COURT: We'll adjourn until tomorrow.
21 Handle it properly. We'll adjourn it until tomorrow
22 morning. Bring in the jury.

23 (The jury is brought in at 3:52 p.m.)

24 THE COURT: Ladies and gentlemen of the jury,
25 at this time we're going to adjourn until tomorrow

1 morning. You are still actually on trial in this
2 court. Tomorrow morning when you come in you will sign
3 in in the Central Jury Room downstairs and come directly
4 to the jury room. We will try to start at 9:30.
5 All right?

6 MR. QUAGLIATA: Judge, I have a problem
7 tomorrow.

8 THE COURT: That's right. You told me.
9 10:30 is the time we will start tomorrow. 10:30
10 tomorrow morning. So please do not discuss the case
11 either among yourselves or with anyone else. The
12 jury may leave.

13 (Whereupon, the matter was adjourned at
14 4:57 o'clock p.m.)
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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 95

THOMAS JAMES,

Defendant.

-----X
S I R :

PLEASE TAKE NOTICE that the defendant, THOMAS JAMES, hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him by the Hon. Henry Bramwell on May 16th, 1975, wherein the defendant was sentenced on his conviction of violating the Federal narcotics laws to seven (7) years imprisonment and five (5) years Special Parole.

Dated: New York, New York
May 21st, 1975

Yours, etc.

TO:
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Two (2)
Service of three (3) copies of the within
is hereby admitted

this day of

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Attorney(s) for

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EASTERN DISTRICT
OF NEW YORK
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